TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1927

277
32

No. 573

GREGORIO AGONCILLO, BALDOMERO ROXAS AND CATALINO LAVADIA, PETITIONERS,

vs.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS

PETITION FOR CERTIORARI FILED OCTOBER 1, 1927

CERTIORARI GRANTED NOVEMBER 21, 1927

(33,025)

(33,025)

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INDEX

	Page
Record from supreme court of Philippine Islands	1
Caption	1
Complaint	1
Exhibit A—Minutes of special meeting of stockholders of the Philippine National Bank, January 17, 1927	18
Exhibit B—By-laws of the Philippine National Bank	28
Table of contents of by-laws	87
Exhibit C—Minutes of special meeting of the shareholders of the Philippine National Bank, January 17, 1927	95
Order requiring defendants to demur or answer	105
Answer	106
Exhibit A—Minutes of special meeting of stockholders of the Philippine National Bank, January 17, 1927	126
Motion to intervene	136

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Page

Complaint in intervention 138
Exhibit A—Minutes of special meeting of stockholders of the Philippine National Bank, January 17, 1927 154
Stipulation to allow complaint in intervention 163
Answer to complaint in intervention 164
Stipulation of facts 165
Stipulation as to filing briefs 214
Minute entries 215
Opinion, Malcolm, J. 217
Concurring opinion, Johnson, J. 228
Dissenting opinion, Avancena, C. J., and Villamor and Villa-Real, JJ. 261
Exception and motion for stay 262
Opposition to motion for stay 264
Order denying motion for stay 269
Decree 270
Clerk's certificate 271
Order allowing certiorari 272

564, 573.

1 Voting of Pharm. is an executive function. The Legislature, may not within the scope of its authority, dispense the Governor from use of that power.

2. The members of the Bd of Control Exercise executive functions. Legislature may not appoint to or remove members to perform such duty.

3 - The line between Executive & Legislative functions should be drawn. The Opening of a Door or ~~window~~ Windows would lead to danger and of the wise rule demanding the Three departments.

The United States of America

PHILIPPINE ISLANDS

In the Supreme Court of the Philippine Islands

G. R. No. 27225

QUO WARRANTO

THE GOVERNMENT OF THE PHILIPPINE ISLANDS,
Plaintiff,

VERSUS

GREGORIO AGONCILLO, BALDOMERO ROXAS AND CATALINO LAVADIA,
Defendants.

(ORIGINAL JURISDICTION)

BE IT REMEMBERED that, on the dates respectively mentioned, the following proceedings were had in the above-entitled case:

On the 24th day of January, 1927, the plaintiff, through its attorneys, filed in the office of the clerk of the Supreme Court, the following complaint:

(CAPTION AND TITLE OMITTED)
COMPLAINT

Now comes the plaintiff in the above-entitled cause and for its cause of action against the defendants herein avers:

I

The Philippine National Bank is a banking corporation organized and existing under and by virtue

of the provisions of Act 2612 of the Philippine Legislature, as amended by Acts 2747 and 2938 thereof, and the Corporation Law of the Philippine Islands.

II

By Section 3 of Act 2612 it is provided that the authorized capital of the Philippine National Bank should be ₱20,000,000.00 divided into 200,000 shares of the par value of ₱100.00 each.

III

By Section 4 of Act 2612 it was provided that the Government of the Philippine Islands should purchase with public funds, at par, 101,000 shares of the stock of the Philippine National Bank.

IV

By Section 5 of Act 2612 it was also provided:

> "That the voting power of all stock purchased directly by the Philippine Government as an investment from the general funds of the Government, and the voting power of all stock purchased for the benefit of the insurance fund, of the public works bonds sinking fund, and of the friar lands bonds sinking fund, shall be vested exclusively in the Governor-General."

V

Pursuant to the authority of Act 2612 the Government of the Philippine Islands purchased and became the registered owner of the majority of the shares of the stock of the Philippine National Bank.

VI

By Section 1 of Act 2747 the provisions of Section 5 of Act 2612 relating to the voting of the stock owned by the Government of the Philippine Islands in the Philippine National Bank were amended to read as follows, to wit:

> "The voting power of all the stock of the National Bank owned and controlled by the Government of the Philippine Islands shall be vested exclusively in a committee consisting of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives."

VII

Thereafter, by Act 2938 of the Philippine Legislature the authorized capital stock of the Philippine National Bank was increased to ₱50,000,000.00, and the Philippine Government was authorized to purchase shares of the stock of the Bank to the aggregate number of 153,000; and the provisions relating to the exercise of the voting power of the stock owned and controlled by the Goverment of the Philippine Islands in the Philippine National Bank were further amended to read as follows:

> "The voting power of all the stock of the National Bank owned and controlled by the Government of the Philippine Islands shall be vested exclusively in a board, the short title of which shall be 'Board of Control,' composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives."

VIII

On November 10, 1926, the Governor-General of the Philippine Islands, by Executive Order No. 37, due notice of the contents of which was given to the President of the Senate and the Speaker of the House of Representatives of the Philippine Legislature, declared that on account of the invalidity of that part of the various acts of the Philippine Legislature creating the voting committees or Boards of Control to deal with the interest of the Government of the Philippine Islands as the holder of shares in private corporations, the Governor-General would thereafter exercise exclusively the duties and powers theretofore assumed by such Boards of Control or voting committees which the Legislature had so attempted to create.

IX

The Board of Directors of the Philippine National Bank consists of nine members elected by the shareholders thereof.

X

On the 23rd day of December, 1926, Mr. A. Gideon, one of the members of the Board of Directors of the Philippine National Bank resigned his office.

XI

At the next meeting of the Board of Directors of the Philippine National Bank a motion duly seconded was made by one of the members thereof that a special meeting of the shareholders of the Bank be

called for the purpose of electing a director to fill the vacancy caused by the resignation of Director A. Gideon. Action on this motion was deferred until the meeting of the Directors of the Philippine National Bank held December 28th, 1926, at which meeting the motion was defeated.

XII

Thereupon a written demand for a special meeting was presented to the President and the Secretary of the Board of Directors of the Philippine National Bank by His Excellency, Leonard Wood, Governor-General of the Philippine Islands, asserting the right to do so on behalf of the Government of the Philippine Islands as a shareholder of the Philippine National Bank, and five private shareholders of the Bank, which said demand is in words and figures as follows, to wit:

"Manila, P. I.,
December 28, 1926.

To the President, Directors
and Secretary of the Philippine National Bank, Manila, P. I.

Gentlemen:

Pursuant to the provisions of Section 34 of the Corporation Law (Act 1459) demand is hereby respectfully made by the undersigned shareholders, the registered owners of more than eighty (80) per centum of the outstanding shares of the stock of this corporation entitled to be voted, that a special meeting of

the shareholders be called, to be held at three o'clock p. m., of the 17th day of January, 1927, at the office of the corporation, Masonic Temple Building, Escolta, Manila, P. I., for the purpose of voting upon the removal of Messrs. Baldomero Roxas, Catalino Lavadia and Gregorio Agoncillo from their offices as directors and the election at the same time and place, of other qualified persons to fill the vacancies created, if the said directors or either of them shall be removed from office at said special meeting; and for the purpose of filling the vacancy now existing due to the resignation of Director Gideon; and for the further purpose of considering the advisability of the repeal of Section Fifty-one (51) of the By-laws.

You are hereby required to give or cause to be given to each of the shareholders of this corporation notice of the time, place and purposes of the said special meeting, such notice to be given in the manner prescribed by Section 44 of the By-laws and by Section 29 of the Corporation Law.

You will please take notice that in the event of your failure or refusal to take the action hereby requested, within forty-eight hours from the delivery of this demand, such special meeting will be called and notice thereof given by one or more of the undersigned shareholders, pursuant to the provisions of Section 34 of the Corporation Law.

Shareholders	*Number of shares owned*
The Government of the Philippine Islands By (Sgd.) Leonard Wood, Governor-General	97,332

(Sgd.) F. C. Fisher	5
(Sgd.) H. L. Heath	1
(Sgd.) J. L. Headington	1
(Sgd.) J. R. Wilson	1
(Sgd.) John Gordon	1"

XIII

Upon receiving the written demand set forth in the paragraph next preceding the President of the Philippine National Bank communicated it to the Board of Directors at their meeting of December 28th, 1926. Whereupon, after the reading of the said demand, one of the directors moved that a special meeting of the shareholders be held in accordance therewith, which motion was duly seconded. After discussion a vote was taken upon the said motion, upon which four of the eight directors then present voted "yes" and three directors then present voted "no". The President of the Philippine National Bank, who is also a member of the Board of Directors, did not vote, but announced that the motion to call a special meeting in accordance with the said petition had been carried, four members voting in favor and three against.

XIV

Thereupon the Secretary of the Bank, acting upon the written instructions of the President, sent printed notices of the time, place and purpose of the said special meeting to each and every shareholder of the said Bank at his last known place of residence, which said notice was sent at the time and in

the manner prescribed by Section 44 of the by-laws of the said Bank and Section 29 of the Corporation Law, which said printed notice is in words and figures as follows, to wit:

"PHILIPPINE NATIONAL BANK
NOTICE OF SPECIAL MEETING
OF THE SHAREHOLDERS

To the Shareholders of the Philippine National Bank:

A request having been filed by the Governor-General, purporting to have been made by him on behalf of the Government of the Philipine Islands, as the owner of 97,332 shares of the stock of this corporation, and by five other shareholders holding (9) shares that a special meeting of the stockholders be held for the following purposes:

(a) To remove Directors Baldomero Roxas, Catalino Lavadia and Gregorio Agoncillo;

(b) To elect directors to fill the vacancies created by such removals, if made;

(c) To elect a director to fill the vacancy created by the resignation of Director A. Gideon; and

(d) To consider the advisability of repealing Section 51 of the By-laws;

and this request purporting to have been made on behalf of stockholders holding more than two-thirds of the outstanding shares entitled to vote, the Board of Directors, by resolution adopted at a meeting held the 28th day of Dec-

ember, 1926, have resolved to convene a special meeting of the shareholders of this corporation, for the purposes above mentioned, to be held at the principal office of the Philippine National Bank, Masonic Temple Building, Escolta, Manila, Philippine Islands, at three o'clock p. m., January 17th, 1927; of which meeting notice is hereby given pursuant to the provisions of the Corporation Law and the By-Laws of the Philippine National Bank.

Manila, December 28, 1926.

(Sgd.) LEON ANCHETA,
Secretary."

XV

In addition to sending printed notices of the call of the said special meeting to each of the shareholders of the Bank, as averred in the paragraph next preceding, the Secretary of the Philippine National Bank caused the said notice as above set forth to be published for one week in two newspapers of general circulation published in the City of Manila —one printed in the English language and one printed in the Spanish language.

XVI

At the time for which the said special meeting was called, to wit, three o'clock p. m., of the 17th day of January, 1927, there were outstanding 100,000 shares of the capital stock of the Philippine National Bank, of which 97,332 shares were owned by and were registered on the books of the corporation in the name of the Government of the Philip-

pine Islands (all of which said shares were purchased directly by the Philippine Government, as an investment, from the general funds of the Government), and 2,668 shares were owned by and registered in the name of private persons.

XVII

The meeting was called to order by the President of the corporation at the time and place designated in the call and notice, and the roll of stockholders was read by the Secretary, whereupon it appeared from the responses of the persons in attendance that there were present in person or by duly authorized proxies 26 private persons owning or representing the owners of 94 of the outstanding shares of the capital stock of the Philippine National Bank, and His Excellency, Leonard Wood, Governor-General of the Philippine Islands, asserting the right to be present on behalf of the Government of the Philippine Islands and to be vested with the exclusive right and power to vote at said meeting the 97,332 shares of the stock of the Philippine National Bank owned by the Government of the Philippine Islands.

XVIII

Neither the President of the Philippine Senate nor the Speaker of the House of Representatives of the Philippine Legislature was present at the said meeting.

XIX

After the roll was called a letter addressed to the President of the Philippine National Bank by the President of the Senate and the Speaker of the House of Representatives was read at the meeting, in which letter protest was made against the holding of the meeting upon the grounds therein set forth, as more fully appears from a copy of said letter incorporated into the minutes of the meeting, a copy of which said minutes is hereunto attached, marked Exhibit "A". After the reading of said letter of the President of the Senate and the Speaker of the House of Representatives, one of the stockholders present raised the question of the lack of a quorum. Whereupon the President ruled, against the objection of His Excellency, the Governor-General, that the authority to vote the shares of the stock of the Philippine National Bank owned by the Philippine Government, is vested exclusively in the Board of Control established by the Charter of the Bank, as amended, and as provided in the by-laws of said Bank, and that said Board not being at the meeting, there was no quorum. Thereupon the President, notwithstanding the protest of the Governor-General against his said ruling, declared the meeting adjourned, and thereupon left the room accompanied by the Secretary and some other stockholders, all of which more fully appears from the minutes of the said meeting, up to the time of the withdrawal of the President, as correctly kept by the Secretary of the Bank, a

copy of which minutes marked Exhibit "A" is hereunto attached.

XX

Immediately after the President declared the meeting adjourned he left the room, accompanied by the Secretary, and some other stockholders; but His Excellency, the Governor-General, and twenty other persons, the owners or representatives of owners of shares of stock of the Philippine National Bank, remained in the place in which they had assembled pursuant to the call and immediately organized by the election of a Chairman *pro tempore* and a Secretary *pro tempore*, and proceeded with the transaction of the business for which the meeting had been called.

XXI

On motion duly seconded it was resolved to repeal Section 51 of the by-laws of the Philippine National Bank, of which by-laws a copy is hereunto attached, marked Exhibit "B" and made a part hereof. The vote upon this resolution was held by written ballots. Including the 97,332 votes cast by the Governor-General of the Philippine Islands, 97,413 votes were cast in favor of the repeal of Section 51 of the said by-laws, and no votes were cast against such repeal, whereupon the Chairman *pro tempore* declared that the resolution had been carried, and that the by-laws had been amended by the repeal of Section 51 thereof.

XXII

Thereupon, upon motion duly seconded, it was resolved that Messrs. Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia be removed from their offices as members of the Board of Directors of the Philippine National Bank. The vote upon this resolution was held by written ballots. 97,411 votes were cast in favor of the adoption of the resolution for the removal of the said directors, including the 97,332 votes cast on behalf of the Government of the Philippine Islands by the Governor-General, and no votes were cast against the resolution, which was declared by the Chairman *pro tempore* to have been duly adopted.

XXIII

Thereupon, upon motion of His Excellency, the Governor-General of the Philippine Islands, seconded by one of the shareholders present, Messrs. Leon M. Heras, Manuel Yriarte, John Gordon and A. Gideon, shareholders of the Philippine National Bank who are neither directors nor employees of any other bank were placed in nomination for election to fill the vacancies on the Board of Directors created by the resignation of Director A. Gideon and by the removal of Directors Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia. There being no further nominations the persons present proceeded to vote by written ballots. Including the 97,332 votes cast by the Governor-General on behalf of the Government of the Philippine Islands, 97,405 votes were

cast for the election of L. M. Heras; 97,409 for the election of Manuel Yriarte; 97,410 for the election of John Gordon; and 97,410 for the election of A. Gideon. Whereupon the Chairman *pro tempore*, after a canvass of the votes so cast, declared that the said Leon M. Heras, Manuel Yriarte, John Gordon and A. Gideon had each been elected to the office of director of the Philippine National Bank.

XXIV

The proceedings taken at the said special meeting of the shareholders of the Philippine National Bank, after the withdrawal of the President and the Secretary of the Bank, as above averred, were as recorded in the minutes of the said meeting, signed by the Chairman *pro tempore* and the Secretary *pro tempore*, a copy of which said minutes marked Exhibit "C" is hereunto attached and made a part hereof.

XXV

Thereafter, the said L. M. Heras resigned the office of director to which he had been declared elected, as averred.

XXVI

Thereafter, to wit, the 21st day of January, 1927, a regular meeting of the Board of Directors of the Philippine National Bank was held at the offices of the corporation in the City of Manila, at which meeting the defendants Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia were pres-

ent, as were also the five uncontested members of the said board.

XXVII

After the said meeting of the Board of Directors was called to order Messrs. Manuel Yriarte, John Gordon and A. Gideon presented themselves at the place of meeting, and submitted to the President of the Bank their certificates of election issued to them by the Secretary *pro tempore* at the meeting of the shareholders held January 17th, 1927, as averred, and then and there severally made demand that they be permitted to participate in the said meeting as members-elect of the Board of Directors of the Philippine National Bank, and that the defendants Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia, and each of them withdraw from the said meeting, and thereafter cease to exercise or to attempt to exercise any of the duties and powers inherent in the office of directors of the Philippine National Bank.

XXVIII

Upon the demand so made by the said Manuel Yriarte, John Gordon and A. Gideon, the President of the Bank presiding at said directors' meeting stated that he declined to recognize their right to membership in said board, and the defendants Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia and each of them did then and there refuse to surrender the offices of directors of the Philippine National Bank or to recognize the right there-

to of the said Manuel Yriarte, John Gordon and A. Gideon; and the said defendants Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia thereafter continued to participate in the transaction of the business of said meeting, and to exercise the functions of directors of the Philippine National Bank.

XXIX

That each and every one of said defendants, namely, Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia has, since the 17th day of January, 1927, usurped, intruded into and unlawfully exercised the office of Director of the Philippine National Bank and does now, and unless ousted therefrom will continue to usurp, intrude into and unlawfully exercise such office, and to exclude therefrom the rightful incumbents, to wit, Manuel Yriarte, John Gordon and A. Gideon who, by virtue of their due election thereto as herein averred, and their acceptance of such offices, claim to be entitled and are entitled, to the offices so usurped, intruded into and unlawfully exercised by the said defendants Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia.

XXX

That the Hon. Manuel L. Quezon and the Hon. Manuel Roxas are members of the Philippine Legislature and are respectively the President of the Senate and the Speaker of the House of Representatives thereof; that the Hon. Manuel L. Quezon has

been the President of the Senate continuously since October, 1916; that the Hon. Manuel Roxas was elected a Representative in the year 1922 and Speaker of the House of Representatives in October, 1922, and has held such offices of Representative and Speaker of the House of Representatives continuously since said date.

WHEREFORE, the plaintiff prays that judgment be rendered that the defendants herein and each of them, to wit, Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia are not entitled to membership in the Board of Directors of the Philippine National Bank, and that they and each of them be ousted and altogether excluded from the said offices and perpetually enjoined from exercising any of the powers inherent therein; and that the said Manuel Yriarte, John Gordon and A. Gideon be inducted into the said offices; and that plaintiff recover its proper costs.

Manila, P. I., January 24, 1927.

(Sgd.) DELFIN JARANILLA,
Attorney-General of the
Philippine Islands.

(Sgd.) F. C. FISHER,
(Sgd.) HUGH C. SMITH,
Special Counsel
for the Plaintiff.

EXHIBIT A

Stockholders Minutes Jan. 17, 1927

MINUTES OF THE SPECIAL MEETING OF STOCKHOLDERS OF THE PHILIPPINE NATIONAL BANK HELD ON JANUARY 17, 1927, AT ITS OFFICES ON THE ESCOLTA, MANILA.

The President called the meeting to order at 3:00 o'clock p. m. and instructed the Secretary to call the roll.

The Secretary reported that there are outstanding 100,000 shares of stock of the Philippine National Bank under Act No. 3174 of the Philippine Legislature. Of these, 97,332 shares are owned by the Government of the Philippine Islands and 2,668 shares, by private stockholders, according to the Bank's stock ledgers. The following private stockholders were present in person:

Stockholder	*No. of Shares*
Delfin Jaranilla	1
A. G. Escamilla	2
Miguel Romualdez	1
C. M. Cotterman	1
John R. Wilson	1
L. M. Heras	5
Halstead Dorey	1
H. L. Heath	1
A. Gideon	1
Carried forward	14

Stockholder	*No. of Shares*
Brought forward	14
Serapion Valle Cruz	1
F. C. Fisher	1
R. R. Ely	1
John Gordon	1
Manuel de Yriarte	1
C. W. Franks	1
Vicente T. Fernandez	1
Hugh C. Smith	1
Rafael Corpus	1
Mateo Herrera	2
Geronimo Santiago	1
J. P. Heilbronn	8
Total	34

The following stockholders were represented by proxy:

Stockholder	*No. of Shares*	*Proxy*
Concepcion Velasco	4	Antonio M. Opisso
Albina Tuason	1	—do—
Emilio Aguinaldo	1	Romarico Agcaoili
Emilio Aguinaldo	1	A. G. Escamilla
Corporación de P. P. Benedictinos	31	Miguel Romualdez
Ong Jan Chuan	13	—do—
Victor Buencamino	7	Mauricio Cruz
Salvador Laguda	1	Ceferino J. de Ortega
Catalino Lavadia	1	Jose Yulo
Total	60	

The Secretary further reported that His Excellency, Leonard Wood, Governor-General of the Phil-

ippine Islands, was present and claimed in his capacity of Governor-General of the Philippines exclusive representation of the 97,332 shares of stock owned by the Government of the Philippine Islands.

The Chair announced that he has received a communication from the Honorable Manuel L. Quezon, President of the Senate, and the Honorable Manuel Roxas, Speaker of the House of Representatives, and forthwith instructed the Secretary to read same before the meeting.

The Secretary read the letter in full which is as follows:

"January 17, 1927.

Hon. Rafael Corpus,
President,
Philippine National Bank,
Manila.

Sir:

Having received notice of a special meeting of the stockholders of the Philippine National Bank appearing to have been issued by the Secretary of said Bank upon the authority of a resolution alleged to have been adopted at a meeting of the Board of Directors on December 28, 1926, we hereby strongly protest against the holding of such meeting,

FIRST, Because there exists at present no valid or lawful reason for the removal of directors Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia, or either of them, or for the amendment of Section 51 of the By-Laws of the Bank and we know that the petition for the calling of this meeting was

presented for the sole purpose of affording the parties signing the said petition an opportunity at this time to raise the issue, as regards the Bank, of the validity of the law creating the Board of Control, when there is now pending before the Supreme Court of the Philippine Islands an action wherein a similar question will necessarily be determined;

SECOND, Because the petition for the calling of such meeting purporting to be made on behalf of the Government of the Philippine Islands as the holder of more than 80% of the stock of the Bank is signed only by the Governor-General asserting sole representation of said stock, when the charter and the by-laws of said Bank exclusively confer such representation upon the Board of Control of which we are members, and, therefore, such petition, in so far as the stock of the Government of the Philippine Islands is concerned, is absolutely without legal force and effect, and should not have been acted upon by the Board of Directors;

THIRD, Because the alleged resolution of the Board of Directors authorizing the calling of such special meeting received the favorable vote of only four members of said Board out of eight members who were present at the meeting, and Section 55 of the by-laws of the Bank provides that 'a majority of the members in attendance at any Board meeting shall decide its action,' consequently the alleged resolution authorizing the calling of this meeting is a nullity; and

FOURTH, Because the call for the meeting is issued under no legal authority as required by Section 43 of the by-laws of the Bank, and therefore no meeting should be held thereunder.

You are therefore requested to refrain from holding any meeting of stockholders under the call above mentioned, and you are hereby notified that the undersigned will contest the validity of any action taken of such meeting, should you insist in holding the same in spite of this protest.

Respectfully,

(Sgd.) MANUEL L. QUEZON,
President of the Senate.
Member, Board of Control.

(Sgd.) MANUEL ROXAS,
Speaker, House of Representatives.
Member, Board of Control."

The Chair also announced that he has just received a communication from Paredes, Buencamino & Yulo, Attorneys for Sergio Osmeña, Esperanza Limjap and the Estate of Estefania de Osmeña, and instructed the Secretary to read same before the meeting. Said letter which was read by the Secretary in full is attached hereto and made a part of these minutes.

Mr. Geronimo Santiago raised the question of quorum and asked the President to determine whether there was quorum or not.

Justice Fisher stated that before the meeting proceeds further he would like to be heard regard-

ing the communication of President Quezon and Speaker Roxas, he (Justice Fisher) being one of the signers of the petition for the calling of a special meeting.

Regarding the first ground of the protest, Justice Fisher said that the removal of directors of a corporation is a question that the stockholders themselves decide; that the Corporation Law does not require that specific statement of the grounds for the removal of directors should be made; that the position of a director of a corporation is similar to that of a party holding a power-of-attorney for another party and such power-of-attorney may be withdrawn by the party giving it at the latter's pleasure; that while it is true that there is pending in the Supreme Court an issue regarding the validity of the Board of Control, that fact is of no importance in this connection. It does not prevent any stockholder from exercising his rights as such.

As to the second ground of the protest, regarding the claim of the Governor-General for exclusive representation of the Government stock in the Bank, Justice Fisher said it raised the direct question of the validity of the Board of Control which is a matter for the courts to decide.

As to the third point, Justice Fisher called attention to certain well known precedents supporting the legality of the resolution of the Board calling for this special meeting. He cited the case of a corporation's board of directors in which four members

attended a meeting. In a matter where two of the members voted favorably and one against and the Chairman announced the resolution carried, the courts held that the resolution was in order as it implied that the President was in favor of the resolution. He therefore believed that the allegation contained in the protest that the resolution calling for a special meeting was a nullity cannot be sustained. Furthermore even if there had been no resolution whatever, Justice Fisher said that the Corporation Law authorized stockholders holding at least one-half (1/2) of the shares entitled to be voted, to call a special meeting for the purpose of removing directors and no action on the part of the Board of Directors is required in such circumstances.

As to the fourth ground, Justice Fisher said it did not need comment as it is similar to the third.

As to the letter of Paredes, Buencamino & Yulo, Justice Fisher said the grounds of protest are similar to those contained in the comunication of President Quezon and Speaker Roxas.

Mr. Geronimo Santiago rose for a point of order stating that before discussing any matter like the protest of President Quezon and Speaker Roxas, the President should first determine whether there is a quorum or not.

Mr. Romarico Agcaoili said that the mere fact that the call for a special meeting was issued by the President showed that he recognizes the right of the Governor-General to vote the stock of the Govern-

ment and moved that the letter of protest be set aside. Mayor Miguel Romualdez seconded the motion.

The Chair explained that the meeting has not yet entered into a discussion of business; that he will presently decide the question of whether there is a quorum or not. He said he just wanted the stockholders to have opportunity to express their opinion whether or not there existed a quorum; and so, as a matter of fairness, he let Justice Fisher to give his points of view on the questions raised by the letters above referred to, since these questions, or one of them at least affect the question of quorum just raised by Mr. Santiago.

Mr. Agcaoili said it was unfair for the President to declare a lack of quorum as if he does not recognize the Governor-General to vote the Government shares of stock he could have said so before this time and saved the stockholders, who are here, the trouble of coming to the meeting. Mr. Agcaoili insisted on his motion that the letter of protest be filed and that the meeting starts the consideration of its business.

Col. Hugh C. Smith seconded the motion of Mr. Agcaoili but said that he did not subscribe to the remarks of Mr. Agcaoili as same are unfair to the President.

The Chairman ruled Mr. Agcaoili out of order; then ruled as follows:

> Section 4 of Act No. 2938, which constitutes the corporate charter of this Bank, pro-

vides that the voting power of all the stock of this Bank owned and controlled by the Government of the Philippine Islands shall be vested exclusively in a board known as the Board of Control, composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives. Section 47 of the By-Laws of the Bank, duly approved by the Board of Directors and by the Board of Control, and acted upon by the stockholders of the Bank for several years, also provides that the voting power of all the stock owned and controlled by the Government of the Philippine Islands is vested exclusively in the Board of Control composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives. It is my understanding that at the present time, there is pending before the Supreme Court of the Philippine Islands a case wherein the validity of a similar provision in a charter of another corporation has been placed in issue; it is not our purpose to anticipate the decision in this case. Until the decision in that case is rendered, or until that particular provision of the Charter and By-Laws is repealed or otherwise amended, it is the duty of this Bank as a corporation to strictly abide by its corporate Charter and its By-Laws. Otherwise, the Bank will incur a breach of that Charter, and furthermore violate the rights of the minority stockholders.

For this reason, I am of the opinion that the stock of the Government of the Philippine Islands can only be counted as duly represented in this meeting, if the Board of Control referred to in its corporate Charter and

its By-Laws appears before this meeting as representing said stock.

Thereupon, the Chairman adjourned the meeting for lack of quorum.

Justice Fisher said that he protested in his behalf and that of the Governor-General to the President's ruling that there is no quorum present. He insisted that there is a quorum because the Board of Directors by majority vote called for this special meeting at the instance of the petitioners. He said that if the Chairman believed there was no quorum that he should vacate the Chair.

The Chairman said that he would not vacate the Chair but would adjourn the meeting and thereupon announced the meeting adjourned for lack of a quorum.

(Sgd.) LEON ANCHETA,
Secretary.

APPROVED:

(Sgd.) R. CORPUS,
Chairman.

EXHIBIT B

BY-LAWS

OF THE

PHILIPPINE NATIONAL BANK

ARTICLE I.—CAPITAL.

Shares: first issue: second issue: par value.

Section 1. The capital stock of the Philippine National Bank shall be fifty million pesos (₱50,000,000.00), Philippine currency, divided into two hundred thousand (200,000) shares called of the first issue and three hundred thousand (300,000) shares called of the second issue. Shares of the first issue are those which are issued in accordance with the provisions of Act No. 2612, and shares of the second issue are those, the issue of which, is authorized by Act No. 2738. Each of the shares of both the first and second issue shall have the par value of one hundred pesos (₱100.00), Philippine currency.

Stock to be sold to the Government of the Philippine Islands: Disposition of stock not subscribed for after June 30, 1921.

Section 2. All the unissued shares of stock of the first issue, and such portion of those of the second issue as will make the aggregate number of not less than one hundred and fifty-three thousand

(153,000), shall be sold at par value to the Government of the Philippine Islands, and the remaining shares may be offered to the provincial and municipal governments, or to the public, at a price, not below par, which the Board of Directors shall from time to time determine: Provided, That the Government of the Philippine Islands, upon agreement with the Board of Directors of the Bank, may, at any time after June thirtieth (30th), nineteen hundred and twenty-one (1921) purchase all or part of the stock on hand at a price not below par.

Government always to own majority stock in the Bank.

Section 3. At no time shall shares be sold to the public if, as a result thereof, the part of the capital stock held by private investors will equal or exceed the part owned by the Government of the Philippine Islands.

Payment of stock subscribed for.

Section 4. Shares of stock of the second issue subscribed for before June 30, 1921, shall be paid either in full, or as follows:

Sixty per centum (60%) of the value at the time of the subscription;

Ten per centum (10%) on or before January thirty-first, nineteen hundred and twenty-two;

Ten per centum (10%) on or before January thirty-first, nineteen hundred and twenty-three;

Ten per centum (10%) on or before January thirty-first, nineteen hundred and twenty-four; and the remaining;

Ten per centum (10%) on or before January thirty-first, nineteen hundred and twenty-five.

Shares subscribed after June thirtieth (30th), nineteen hundred and twenty-five (1925), shall be paid in the form and manner prescribed by the Board of Directors of the Bank.

ARTICLE II—CERTIFICATE OF STOCK.

Certificates: form of certificates of partially paid stock: assignment: form of certificates of fully paid stock: assignment.

Section 5. Certificates of shares shall be engraved, and shall clearly set forth:

(a) The part of the value paid up, or the fact that the stock is fully paid.

(b) The form and conditions under which subsequent payment shall be made, as well as the penalty to be incurred in case of delinquency.

The certificates of ownership of partially paid shares issued shall be in the following form:

No..... .....Shares

PHILIPPINE NATIONAL BANK

MANILA, P. I.

OFFICIAL DEPOSITORY OF THE PHILIPPINE GOVERNMENT CREATED BY ACT NO. 2612, PHILIPPINE LEGISLATURE, AS AMENDED BY ACTS NOS. 2747 AND 2938.

PARTLY PAID STOCK.

This is to certify that.....
who is subscriber for..... shares

of One Hundred Pesos, Philippine Currency, each, of the capital stock of the Philippine National Bank, has paid on account of his said subscription ₱60.00 per share. Upon payment of the remaining installments of said subscription, and surrender of this certificate, accompanied by evidence that the remaining installments have been paid, duly executed stock certificates for said..... shares will be issued to the said..... or his assignee.

The payment of subsequent installments shall be made to the Cashier of the Bank, who will issue receipts referring by number to this stock certificate. Delinquency in the payment of such installments shall deprive the holder of this certificate of the right to vote during the period of delinquency. Further, the overdue installments shall bear interest at the rate of ten per centum per annum from the date of delinquency: Provided, That upon failure to pay an installment within one year after the same shall become due, proceedings shall be instituted in the manner provided in sections 38 to 49, inclusive, of Act No. 1459, dealing with failures of stockholders to respond to class for unpaid subscriptions and assessment of stock.

Issued ....., 1921.

.....
President.

Attest:

.....
Secretary.

On the back of the certificate the following shall appear:

ASSIGNMENT OF CERTIFICATE.

For value received, I hereby sell, assign and transfer to..... all my rights, title and interests in and to the shares of stock referred to in the within certificate, together with the payment of..... ..... pesos made thereon by me, and I do hereby authorize and direct the proper officers of the Philippine National Bank, upon full payment for said shares, under the terms of my subscription, to issue a certificate for the said stock to the said..... .....

.....
Signature of Subscriber.

Witnesses:

.....
.....

The certificates of ownership of fully paid shares shall be in the following form:

No. ....Shares

PHILIPPINE NATIONAL BANK
MANILA, P. I.

This is to certify that .... is the owner of .... fully paid shares of the Philippine National Bank, Manila, P. I., a corporation created by

Act No. 2612 of the Philippine Legislature, as amended by Acts Nos. 2747 and 2938.

Issued ....., 192....

.....
President.

Attest:

.....
Secretary.

On the back of the certificate the following shall appear:

ASSIGNMENT OF CERTIFICATE.

For value received, I hereby sell, assign and transfer to ..... all my rights, title, and interests in and to the shares of stock referred to in this certificate, and I do hereby authorize and direct the proper officers of the Philippine National Bank to issue a certificate for said stock to the said .....

.....
Signature.

Witnesses:

.....

.....

Other requirements in the Certificate: data to be entered in the stubs of the stock book.

Section 6. Certificates of shares shall be numbered, bear the signatures of the President and of

the Secretary, and the seal of the Bank, and shall be issued in numerical order from the stock certificate book.

Date necessary to identify each certificate issued shall be entered upon the corresponding retained stub in the stock book.

Manner of transferring certificates of stock: stock transfer book.

Section 7. Transfers of stock certificates shall be made by filling in the form on the back of each certificate. Such transfers shall be recorded in a book kept for this purpose by the Bank. The certificates transferred shall be canceled and attached to their respective stubs, and new certificates shall be issued to the transferees. The stock transfer book shall be kept at the main office of the Bank in the city of Manila, and shall be open to inspection by any stockholder of the Bank at any time during office hours.

Issue of a new certificate to replace one lost or mutilated.

Section 8. The Board of Directors may order a new certificate issued to replace any certificate of shares alleged to have been lost or mutilated; but the owner of the certificate so lost or mutilated shall furnish a bond to the Bank in such sum as the Board of Directors may require, but which shall, in no case, be less than the par value of the certificate lost or mutilated, to secure the Bank against any loss or claim resulting from the issuance of the new

certificate; and, when the Board of Directors deems it necessary, the intention to issue such new certificate shall be published in a daily newspaper of the city of Manila, for a period of fourteen days, at the expense of the owner of the certificate so lost or mutilated.

ARTICLE III—DOMICILE.

Section 9. The Philippine National Bank shall be domiciled in the city of Manila, Philippine Islands.

ARTICLE IV—TRANSACTIONS OF THE BANK IN GENERAL.

Section 10. The Philippine National Bank may engage in the following operations:

1st. Agricultural loans.
2nd. Issue of first mortgage real estate bonds.
3rd. Exchange and other banking operations.
4th. Issue of circulating notes.
5th. Other loans as provided by law.

ARTICLE V—AGRICULTURAL LOANS.

Limit: securities must be approved by the Attorney for the Bank.

Section 11. For the purpose of promoting agriculture the Philippine National Bank may make loans on promissory notes secured by real estate mortgages, in an aggregate sum, which at no time shall exceed sixty per centum (60%) of its capital and surplus and all amounts realized from the sale of real estate bonds as provided in section thirteen

(13) of these By-Laws. Provided, That no loan shall be made on the security of a mortgage on real estate, the title to which, is considered defective, questionable or insufficient by the Attorney for the Bank.

Terms and conditions.

Section 12. The Philippine National Bank shall make agricultural loans only upon the following terms and conditions:

(a) Every such loan shall be evidenced by a note secured by a first mortgage on real estate duly registered in the Philippine Islands.

(b) The due date of said mortgage shall not be less than one (1) year after the date of its execution, nor more than ten (10) years.

(c) When the due date of the mortgage is five (5) years or more after the date of its execution, the principal and interest of the loan shall be made payable by its terms in equal installments of not more than one (1) year each. When the due date of the mortgage is less than five (5) years after the date of its execution, the principal and interest of the loan shall be made payable by its terms, at one time or in installments, in the discretion of the Board of Directors of the Bank.

(d) Such loans shall be made only for the following purposes:

1st. For the improvement, cultivation and development of farm lands.

2nd. To provide for the purchase of the equip-

ment and live stock reasonably necessary for the improvement, cultivation, and development of farm lands, the term "equipment" to be defined by the Board of Directors of the Bank.

3rd. To liquidate indebtedness incurred for the improvement, cultivation, and development of farm lands.

4th. To assist in the purchase of farm lands.

(e) The amount of the loan must not exceed sixty per centum (60%) of the actual value of the land and improvement mortgaged, the appraisal to be made in accordance with the following rules:

1st. The appraisal shall be made by an agent of the Bank in accordance with the rules and regulations laid down by the Board of Directors.

2nd. When permanent improvements, such as buildings and machinery, are offered as security together with the farm land, and they form an integral part of the agricultural development, said buildings and machinery shall be appraised as a part of such farm land, and the mortgage shall contain a clause obligating the mortgagor to insure them to their full value in the name of the National Bank.

(f) Applications for such loans shall be made in writing, and under oath, on the forms prescribed by the Board of Directors. The applications shall contain, among other things:

1. A detailed description of the real estate, and the improvements thereon, if any, offered as security;

2. An appraisal of such lands and the improvements thereon, if any, at their reasonable market value;

3. A full statement of the purpose for which the loan is desired;

4. Assessed valuation for the last five (5) years;

5. Annual earnings for the same period.

6. Encumbrances.

(g) The mortgage shall contain a clause wherein the mortgagor binds himself to furnish all documentary stamps necessary for the transaction, to pay all fees for the registration of the documents connected with it, and to pay all lawful taxes and assessments on the mortgaged property.

(h) The mortgagor shall also bind himself not to use the proceeds of the loan, or any part thereof, for any purpose or purposes except the purpose or purposes set out in his application, and shall state that any violation of this condition shall be sufficient cause for the rescission of the contract and the foreclosure of the mortgage.

ARTICLE VI—ISSUE OF FIRST MORTGAGE REAL ESTATE BONDS.

Amount: conditions: redemption.

Section 13. The Philippine National Bank may issue real estate bonds in any sum not to exceed ninety per centum (90%) of the amount of agricultural loans held by it under section eleven (11) and

section twelve (12) of these By-Laws. Said bonds shall be engraved, signed by the President of the Bank, and authenticated by the Insular Auditor, and shall bind the Bank to pay the bearer of the bond on the date therein named, the principal sum mentioned in said bond, with interest payable semi-annually, at the rate fixed by the Board of Directors. Said bond shall be payable, both principal and interest, in gold coin of the United States: Provided, however, That bonds held by persons or corporations residing in the Philippine Islands, shall be payable in lawful money of the Philippine Islands, or in gold coin of the United States, at the option of the Bank.

The real estate securities against which bonds are issued shall be deposited with the Treasurer of the Philippine Islands, and each of said bonds shall bear on its face a certificate of the Insular Treasurer in words and figures as follows:

> "I hereby certify that there are on deposit in the Treasury of the Philippine Islands first mortgage real estate securities in the sum of one hundred eleven and one-ninth per cent (111-1/9%) covering real estate of an appraised value of one hundred eighty-five and five twenty-seventh per cent (185-5/27%) of the face value of this bond; which said real estate securities or other first mortgage real estate securities of equal value or the proceeds thereof are to be held by me as security, additional to the promise of the Philippine Na-

tional Bank for the prompt payment of this bond, principal and interest.

. . . . . .

Treasurer of the Philippine Islands."

Such bonds shall also state the fact that by Act of the Philippine Legislature "they shall be receivable by the Insurance Commissioner under section one hundred and seventy-eight of Act Numbered Twenty-four hundred and twenty-seven," and "by way of security in all customs and internal revenue transactions where security is required, and in any and all cases where by statute security may be required in dealings with the Government" and "they shall be exempt from any and all taxes levied or assessed by the Government of the Philippine Islands, or any department, division or subdivision thereof."

Said bonds shall be issued in such amounts and form, at such times, and for such periods, as may be expressly provided by resolution of the Board of Directors. They shall be redeemable at par on or before the date of their maturity, and shall contain a provision to the effect that they are subject to redemption by lot at such date as the Board of Directors of the Bank may designate: Provided, however, That such of the bonds so chosen by lot for redemption as have not been outstanding for at least three-fourths (¾) of the period for which issued shall be retired with a premium of five per centum (5%) of the par value thereof. The bonds so cho-

sen for redemption shall cease to bear interest beginning with the date set for their withdrawal, and the aforesaid selection by lot shall take place at least one hundred (100) days before the date of the withdrawal: And provided further, That the serial numbers of the bonds so selected shall be published for a period of not less than three (3) months in two (2) daily newspapers of general circulation in the Philippine Islands, and by notification of the Bureau of Insular Affairs at least three (3) months before said redemption.

ARTICLE VII—EXCHANGE AND OTHER BANKING OPERATIONS.

Section 14. The Philippine National Bank may engage in the following operations:

Deposits.

(a) Receive deposits of funds of the Insular Government, the provinces, municipalities, Postal Savings Bank associations, corporations, and private persons.

Purchase and discount of negotiable instruments.

(b) Purchase or discount promissory notes, drafts, and bills of exchange, issued or drawn for agricultural, industrial or commercial purposes, or the proceeds of which have been used or are to be used for such purposes, when supported by securities approved by the Board of Directors or the General Manager, as the case may be.

Loans and discounts on harvested and stored crops.

(c) Make loans on, or discount notes secured by, harvested and stored crops: Provided, That no loan on the security of such harvested and stored crops shall exceed seventy per centum (70%) of the market value thereof on the date of the loan: Provided further, That the crops so mortgaged shall be insured by the mortgagor for the benefit of the National Bank for their entire market value: And provided, finally, That if, owing to any circumstance whatever, the value of the crops given as security shall diminish, the mortgagor shall be bound to furnish additional security, or refund such part of the loan as the Bank may deem necessary. Such loans shall be granted for a period of three (3) months, subject to three (3) months' extension, in the discretion of the Bank.

Loans on standing crops.

(d) Make loans to agriculturists in installments, on standing crops of the natural products of the Philippine Islands, such as rice, hemp, copra, sugar, tobacco, corn, maguey, etc., not in excess of three-fifths (3/5) of the estimated value of such crops: Provided, however, That before granting such loans, the Bank may require additional security in the nature of mortgages on real estate duly registered in the name of the debtor, or chattel mortgages, including those upon live-stock, machinery, and agricultural implements, or personal bonds

with sufficient surety or sureties, satisfactory to the Bank.

Loans to government entities.

(e) Make loans to the several provincial and municipal governments, and to any other branch, or subdivision of the Government of the Philippine Islands, on promissory notes guaranteed by the Central Government, as shown by the endorsement thereon of the Secretary of Finance, approved by the Governor-General of the Philippine Islands.

Purchase and sale of negotiable instruments.

(f) Purchase and sell in the open market paper of all kinds eligible for discount from or to domestic or foreign banks, firms, companies, corporations, or individuals.

Collection of negotiable instruments.

(g) Collect drafts and other current negotiable instruments.

Trust funds.

(h) Receive and care for funds or deposits in trust.

Safe deposit.

(i) Receive and hold in trust gold and silver bullion, and valuables, stocks, bonds, and other securities issued by corporations.

Negotiation of drafts.

(j) Negotiate and draw domestic and foreign bills of exchange.

Purchase and sale of gold and silver.

(k) Purchase and sell gold and silver, in coin or bullion.

Loans on documentary bills of exchange.

(l) Make loans on export bills of lading, when approved invoices and insurance policies are attached thereto. Provided, That such loans shall not exceed seventy per centum (70%) of the market value of the merchandise; but this subsection shall not be understood as prohibiting the Bank from purchasing documentary bills of exchange at their full value when the Bank is in possession of indubitable proof that the merchandise has been sold.

Loans on vessels.

(m) Make loans for not more than one (1) year upon vessels fully insured and free from encumbrance, such loans not to exceed one-half (½) of the appraised value of the vessels.

Advances in general.

(n) Make advances, or discount paper, for agricultural, manufacturing, industrial or commercial purposes; Provided, That loans, discounts or advances made under this paragraph shall have maturities not exceeding one (1) year, renewable from year to year, in the discretion of the Board of Directors. And provided further, That the loans, discounts, or advances shall not exceed seventy per cent (70%) of the market value of the securities support-

ing such loans, discounts, or advances *when such securities consist of stocks, bonds, warehouse receipts, or other personal property, and 60% when they consist of real property* on the date on which the loan, discount or advance is made.

Purchase and sale of securities on commission.

(o) Purchase and sell securities on commission under the regulations established by the Board of Directors.

Government agencies.

(p) Act as agents of the Insular, provincial, municipal and city governments in commercial, financial and industrial transactions.

Acceptance of commercial bills of exchange.

(q) Accept commercial bills of exchange running for not more than six (6) months.

Dollar exchange.

(r) Receive at par United States Treasury notes, United States National Bank notes, United States gold certificates, United States silver certificates, Federal Reserve Bank notes, and Federal Reserve notes, in exchange for Philippine currency, and pay out United States Treasury notes, United States National Bank notes, United States gold certificates, United States silver certificates, Federal Reserve Bank notes, and Federal Reserve notes, in exchange for lawful currency of the Philippine Islands, at the request of the Insular Government, whenever the

said Government shall provide funds necessary therefor.

Purchase and sale of first mortgages upon farm lands.

(s) Purchase and sell first mortgages upon farm lands in the Philippine Islands, subject to such rules and regulations as may, from time to time, be promulgated by the Board of Directors.

Purchase and sale of first mortgage real estate bonds issued by the Bank.

(t) Purchase and sell first mortgage real estate bonds issued by the Bank.

Purchase and sale of government bonds.

(u) Buy and sell United States bonds, or bonds issued by the Government of the Philippine Islands or by any department, division or subdivision thereof, or bonds endorsed, or guaranteed by said Government of the Philippine Islands, or by any department, division or subdivision thereof.

Savings accounts.

(v) Provide facilities for the safe investment of the savings of the people of the Philippine Islands.

All other acts.

(w) Perform any other banking function not incompatible with the provisions of Act No. 1459 and Act No. 2612 as amended by Acts Nos. 2747 and 2938.

ARTICLE VIII—CIRCULATING NOTES.

Denominations: size and legend.

Section 15. Circulating notes may be issued by the Philippine National Bank in the denominations of one (P1), two (P2), five (P5), ten (P10), twenty (P20), fifty (P50), one hundred (P100), two hundred (P200) and five hundred (P500) pesos, and such circulating notes shall be of the same size as the notes of the Philippine Government, and shall bear the following legend:

> (On the face): Philippine National Bank Circulating Note—Issued under the provisions of Act Numbered 2612 as amended by the provisions of Acts Nos. 2747 and 2938 of the Philippine Legislature—(Number) series of ..... —The Philippine National Bank will pay the bearer on demand—Pesos in lawful currency of the Philippine Islands—(Seal) Manila, P. I. (date)—(Number) series of..... (Signature) Cashier—(Signature) President.
>
> (On the back):.....Pesos—Philippine National Bank Circulating Note—This note is receivable by the Philippine Government in payment of all taxes, dues, or other claims due or owing to said Government and is exempt from all taxes.

Amount of circulating notes which may be issued: against the Bank's capital and surplus: against gold coin held by the Bank.

Section 16. Circulating notes may be issued in amounts not exceeding the paid-up capital and sur-

plus of the Bank, plus the amount of gold coin of the United States owned and held by it in its own vaults, or to its order in the Treasury of the Philippine Islands, or of the United States, or in solvent National Banks of the United States, or in any Federal Reserve Bank.

Issue of emergency circulating notes under Act No. 2938.

In cases of emergency, and subject to the approval of the Board of Control, the Secretary of Finance may authorize the Philippine National Bank to rediscount commercial paper of not over six (6) months maturity, secured by exports or imports, and the Philippine National Bank may issue against said commercial paper circulating notes for sums not to exceed seventy-five per centum (75%) of the value thereof.

Issue of emergency circulating notes under Act No. 2924.

Whenever in his judgment the needs of commerce and the public interest require an increased monetary circulation, the Secretary of Finance, with the approval of the Council of State, may authorize the Philippine National Bank to issue notes, in an amount in excess of the limit provided in this section, upon depositing with the Insular Treasurer bonds of the Government of the United States, or of the Government of the Philippine Islands, or commercial paper secured by warehouse receipts for

principal products of the Philippine Islands, acceptable to the Secretary of Finance. Such securities shall be endorsed, and legally transferred to the Insular Teasurer, as representative of the Government of the Philippine Islands, who shall safely keep the same, and who shall, upon the order of the Secretary of Finance, take possession of the same, and realize them, in order to use the proceeds of their sale for the redemption of the notes issued, in case the Bank should fail to redeem the same, or otherwise fail to comply with the conditions imposed by the Secretary of Finance in accordance with the provisions of Act No. 2924. The total issue of notes by virtue of this paragraph shall never exceed the par value of the bonds, nor seventy per centum (70%) of the market value of the products covered by the warehouse receipts, as the Secretary of Finance may determine. In case the market value of the securities deposited as guarantee for the notes issued shall depreciate to such an extent that such securities shall be insufficient to cover the amount of the outstanding notes, the Bank shall deposit additional securities, or legal currency, or shall restrict its circulation.

Reserve for notes issued against the Bank's capital and surplus: reserve for notes issued against rediscounted paper: redemption of, and reserve for, notes issued under Act No. 2924: securities for the redemption of circulating notes.

Section 17. The Philippine National Bank shall hold, at all times, either in its vaults, or in the

Treasury of the Philippine Islands, in lawful money of the Philippine Islands, at least twenty-five per centum (25%) of the value of the circulating notes issued against its capital and surplus.

Whenever the Philippine National Bank issues circulating notes against rediscounted commercial paper, it shall deposit as a reserve for their redemption, in the vaults of the Insular Treasury, in lawful currency of the Philippine Islands, twenty-five per centum (25%) of said issue.

The notes issued under the provisions of Act No. 2924 shall be redeemed upon the sale of the securities or goods involved in the guarantee, or within a period to be fixed by the Secretary of Finance. For this purpose, it shall be sufficient for the Bank to deposit with the Insular Treasurer legal money in an amount equal to that of the outstanding notes, in substitution for the securities deposited as original guarantee. As a reserve for the redemption of these notes, the Bank shall retain, in lawful money of the Philippine Islands twenty-five per centum (25%) of the issue, as follows: twenty per centum (20%) in its own vaults or in the Treasury of the Philippine Islands, and the remaining five per centum (5%) must be deposited with the Insular Treasury.

All the securities described in section fourteen (14), paragraph "b" of these By-Laws, and the proceeds thereof, shall be held and kept for the payment and redemption of the circulating notes issued by

the bank against its capital and surplus, and the emergency circulating notes issued by the Bank against rediscounted paper.

In case the Philippine National Bank issues circulating notes against gold coin owned and held by it in its own vaults, or to its order in the Treasury of the Philippine Islands or of the United States, or in any solvent National Banks of the United States, or in any Federal Reserve Bank, such gold coin shall be kept and held by the Bank and used for no other purpose, except the redemption of the circulating notes so issued. The Bank, however, shall have the privilege of redeeming said circulating notes in any lawful money of the Philippine Islands.

Privileges of Philippine National Bank circulating notes. Place of redemption.

Section 18. Section 14 of Act No. 2938 provides that all circulating notes issued by the Philippine National Bank shall be receivable by the Philippine Government in payment of all taxes, dues or other claims due or owing to said Government, and shall be redeemed by the Bank, on demand, in lawful money of the Philippine Islands, at the Central Office in Manila.

ARTICLE IX—OTHER POWERS AND PRIVILEGES GRANTED TO THE BANK.

Right to hold and dispose of real estate.

Section 19. The Philippine National Bank may purchase and own such real estate as may be necessary for the purpose of carrying on its business. It shall have, also, the right to hold such real estate as it may find necessary to acquire in the collection of debts due to it or to its branches; but the real estate so acquired shall be held by the Bank for one (1) year from the time of its purchase subject to the mortgagor's right of redemption and, after that time has elapsed, the Bank must sell the property so acquired within four (4) years.

Right to erect bonded warehouses.

Section 20. The Philippine National Bank may erect bonded warehouses for depositing therein the goods given to it in pledge, in any provincial capital, or in any municipality, where the commercial movement, or the industrial or agricultural importance of the place may require it.

Guaranty of bonds issued by manufacturing corporations.

Section 21. The Philippine National Bank may guaranty, both as to principal and interest, or either, bonds issued by duly incorporated companies for the erection of and addition or additions to, industrial plants or manufacturies principally used for the manufacture and preparation of the products of the

Philippine Islands: Provided, however, That such guaranty shall only be lawful when approved by the Board of Control.

Purchase of bonds issued by manufacturing corporations.

Section 22. Subject to the same approval, the Philippine National Bank may purchase bonds issued by any duly incorporated company engaged in the manufacture or preparation of products of the Philippine Islands. Such bonds shall be secured by a first mortgage, or deed of trust, on the property of the company. The face value of the bonds issued and secured by such mortgage, or deed of trust, shall not exceed sixty per centum (60%) of the fair value of the property securing the bonds. The property serving as security for the bonds shall consist of the land, buildings, machinery and equipment of such company in the Philippine Islands.

Purchase of shares in American Banks: incorporation of branches in foreign countries.

Section 23. The Philippine National Bank may invest a sum, not exceeding ten per centum (10%) of its paid up capital, in the purchase of shares of stock of any banking corporation constituted under the laws of any State of the United States, and hold the same: Provided, however, That, subject to resolution of the Board of Directors and the approval of the Board of Control, it may incorporate any of its foreign agencies, now or hereafter established, un-

der the laws of the country or state where the same may be located, and may retain the stock of such corporation as an investment.

Sale of personal property pledged or mortgaged to the Bank.

Section 24. If, from any cause whatsoever, any of the securities accepted by the Bank as security for loans or discounts decline, or depreciate in market value, in part or as a whole, or, on nonperformance of any promise made in order to obtain the loan or discount, or regarding bills of exchange, notes, and checks, the Bank may demand additional securities or may forthwith declare any such obligation due and payable, and upon three (3) days' notice if practicable, or without such notice, if otherwise, demand, sell, assign, transfer, and deliver the whole of said securities, or any part thereof, or any substitutes therefor, or any additions thereto, or any other securities or property given unto or left in the possession of, or thereafter given unto, or left in the possession of the Bank for safekeeping or otherwise, at any brokers' board or at public or private sale, at the option of the Bank, without either demand, advertisement, or notice of any kind, and at such sale, if public, the Bank may itself purchase the whole or any part of the property sold, free from any right of redemption on the part of the mortgagor or pledgor. In case of sale for any cause, after deducting all costs or expenses of any kind, for collection, sale or delivery, the Bank may apply

the residue of the proceeds of the sale so made, to pay one or more or any or all of the said liabilities to the Bank, as its General Manager shall deem proper, whether then due or not due, making proper rebate for interest on liabilities not then due, returning the overplus, if any, to the mortgagor or pledgor, who shall remain liable to and pay to the Bank for any deficiency arising upon such sale or sales.

If the proceeds of the sale of securities held as collateral for loans by the Bank do not cover the full amount of the loan, together with interest and other charges thereon, the Bank may proceed against the debtor for the difference, but any amount exceeding the full indebtedness to the Bank shall be paid to the debtor.

The Bank depository of the Government funds in the Philippine Islands.

Section 25. Section 15 of Act No. 2938 provides that the Philippine National Bank shall be the depository in the Philippine Islands of all funds belonging to the Government of the Philippine Islands and all the provincial and municipal governments.

ARTICLE X—GOVERNMENT INSPECTION, AND OTHER REGULATIONS PROVIDED FOR THE SAFETY OF BANKING OPERATIONS.

Inspection by the Insular Treasurer.

Section 26. The National Bank shall be sub-

ject to inspection by the Insular Treasurer with regard to its solvency in the manner provided by law.

Prohibitions to officers of the law to divulge the Bank's secrets.

Section 27. The Insular Treasurer, and Auditor, or other officers designated by law to inspect or investigate the condition of the Bank, shall not reveal to any person other than the Governor-General, the Secretary of Finance and the Board of Directors, the details of the inspection or investigation, nor shall they give any information relative to the funds in its custody, its current accounts or deposits belonging to private individuals, corporations, or any other entity, except by order of a court of competent jurisdiction.

Prohibition to certain Government officials to own shares in the Bank or to be indebted to it.

Section 28. The Secretary of Finance, the Insular Treasurer, the Insular Auditor, and the latter's representative, the chief of the Auditing Department of the Bank, are hereby prohibited from owning stock in the National Bank, or from becoming indebted to said National Bank, directly or indirectly, in any sum.

Prohibition to grant loans to directors, officers and employees: conditions in granting loans to corpo-

rations, partnerships or companies where a member of the Board has any interest.

Section 29. The Philippine National Bank shall not, directly or indirectly, grant loans to any of the members of its Board of Directors, or to its General Manager, or to its Assistant General Manager, or to any of its officers and employees in the Central Office or in its branches, and no loan shall be granted to any corporation, partnership, or company wherein any of the members of the Board of Directors is a shareholder, or agent or is employed in any capacity whatsoever, except by the unanimous consent of the Board, excluding the member interested. Provided, That the total obligations to the Bank, of any corporation, partnership or company wherein any of the members of the Board of Directors is a shareholder, or agent, or is employed in any capacity whatsoever, shall, at no time, exceed ten per centum (10%) of the capital and surplus of the Bank.

Prohibition to grant loans without first requiring proper securities: mortgages to be registered: margin of securities.

Section 30. Before granting any loan, discount or advance of funds, the Board of Directors of the Philippine National Bank shall require definite security in written form to protect such loan, discount, or advance of funds. Said security shall be kept by the official duly appointed, and in case it be in the form of a mortgage it shall be recorded with the Registrar of Deeds of the city, province, or munici-

pality where the property is situated. The margin of such security over and above of loan, discount or advance of funds, shall at all times be thirty per centum (30%) over and above its market value; however, documentary bills of exchange may be discounted at their full value, whenever the Bank is in possession of indubitable proof that the goods have been sold.

Prohibition to grant loans on Bank's own shares.

Section 31. The Philippine National Bank shall not make any loan, discount or advance of money on the security of the shares of its own capital stock, nor be the purchaser or holder of any such shares, unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith, and stock so purchased or acquired shall, within six (6) months from the time of its purchase, be sold or disposed of at public or private sale.

Limitation of loans that may be granted to any one person, company, firm or corporation. The term "loan" defined.

Section 32. The total liabilities to the Bank of any person, or of any company, corporation, or firm for money borrowed, including in the liabilities of the company or firm, the liabilities of the several members thereof, shall at no time exceed ten per centum of the capital stock of such Bank actually paid in and unimpaired and ten per cent of its un-

impaired surplus fund: Provided, however, that the total of such liabilities shall in no event exceed thirty per centum of the capital stock of the Bank; but the discount of bills of exchange drawn in good faith against actually existing values and the discount of commercial or business paper, actually owned by the person negotiating the same shall not be considered as money borrowed.

The term "loan" whenever used in these By-Laws shall include "overdraft" and the restrictions contained in this Article, shall apply to all loans of whatever nature, secured either wholly or partly by a real estate mortgage.

No commission shall be exacted, demanded or paid, for obtaining loans.

Section 33. No fee or charge of any kind by way of commission shall be exacted, demanded or paid, for obtaining loans, and any officer, employee or agent of the Bank exacting, demanding, or receiving any fee for service in obtaining a loan or for use of his influence to obtain a loan, shall be punished as provided in section thirty-six (36) of these By-Laws.

Cash on hand: prohibition to make any new loan whenever the cash on hand is below the amount required: authority to suspend the provisions in this section: daily report on the cash on hand.

Section 34. The Philippine National Bank shall at all times, keep on hand in its vaults or with the

59

Treasury of the Philippine Islands, a sum in lawful money either of the Philippine Islands or of the United States, which shall be computed as follows:

Twenty-five per centum (25%) of the circulating notes outstanding, not covered by gold coin, as provided in section seventeen (17) of these By-Laws.

Twenty per centum (20%) of the demand deposits outstanding and credited on its books, and of the fixed deposits maturing within thirty (30) days; except funds as are on deposits with solvent banks in the United States and collateraled by securities approved by the Insular Treasurer, or in solvent banks approved by the Insular Treasurer: Provided, That if the National Bank shall have funds subject to check with National Banks or Federal Reserve Banks of the United States, such funds may be considered as constituting a part of the twenty per centum (20%) specified in this section, up to a sum, to be fixed, from time to time, by the Secretary of Finance, with the approval of the Governor-General.

Whenever the lawful money kept by the Bank in all its vaults, or with the Treasury of the Philippine Islands, as required in this section, shall be below the amount herein prescribed, the Bank shall not diminish the amount of such lawful money by making any new loans or discounts until the required proportion between the aggregate amount of its deposits and circulating notes and its lawful money has been restored: Provided, however, That the Se-

cretary of Finance, at the request of the Board of Directors of the Bank, duly approved by the Board of Control, whenever in his judgment the general interests of the country require it, shall be authorized to suspend, for such period as may be necessary, the requirement of maintaining the proportion of the reserve specified in this section and in section seventeen (17) of these By-Laws. The Bank shall make a daily report showing the condition of its reserve as required in this section, and the amount thereof and place where kept.

Prohibition to withdraw capital in the form of dividends or otherwise.

Section 35. The Bank shall not, during the time it shall continue its banking operation, withdraw, or permit to be withdrawn, either in the form of dividends, or otherwise, any portion of its capital.

Penalties for the violation of the provisions of the Bank's charter.

Section 36. Section 43 of Act. No. 2938 provides: "Any member of the Board of Directors of the National Bank who knowingly violates or knowingly permits any of the officers, agents, or servants of the Bank to violate any of the provisions of this Act, and any officer, employee, agent, or servant of the Bank who violates any of the provisions of this Act, and any person aiding and abetting the violation of any of the provisions of this Act, shall be punished by a fine not to exceed ten thousand pesos, or

by imprisonment not to exceed five years or by both such fine and imprisonment."

ARTICLE XI—DISPOSITION OF NET PROFITS

Creation and maintenance of the legal reserve: net profits how ascertained: bad debts defined.

Section 37. The Philippine National Bank shall, semiannually, set aside, for the creation and maintenance of the legal reserve, fifty per centum (50%) of its net profits, which shall be ascertained by deducting from the gross profits the administration expenses, the losses sustained, and bad debts. All debts due to the Bank on which interest is past due and unpaid for a period of six (6) months, unless they are well secured, and in process of collection, shall be considered bad debts within the meaning of this section.

Distribution of dividends: limitation to the dividends that may be declared: when dividends cannot be declared.

Section 38. The remaining fifty per centum (50%) of the net profits shall be distributed by the Board of Directors among the stockholders in the form of dividends: Provided, however, That the dividends so distributed shall not exceed in any calendar year, twelve per centum (12%) of the paid up capital and legal reserve: And Provided further, That no dividends shall be declared whenever the cash on hand, required in section thirty-four (34)

of these By-Laws to be kept by the Bank, is below the amount therein prescribed.

Undivided profits.

Section 39. In case there is a surplus after the necessary provision has been made for the legal reserve and dividends as provided in the two preceding sections, such surplus shall be transferred to the account of undivided profits.

ARTICLE XII—STOCKHOLDERS.

Powers

Section 40. The stokholders at any regularly called meeting shall have the following powers:

(a) To select the nine elective directors of the Bank,

(b) To act on recommendations made by the Board of Directors or any stockholder, and

(c) To exercise any powers not expressly conferred upon the Board of Directors or any executive officer of the Bank, and not in conflict with the charter of the Bank, or with the Corporation Law.

Annual meeting of stockholders: election of Directors: report of the Board of Directors.

Section 41. The annual meeting of stockholders shall be held at the office of the Bank in the city of Manila at four (4) o'clock in the afternoon of the first Tuesday after the first Monday in March of each year, unless the same be a legal holiday, in

which case it shall be held on the day next following.

At such annual meetings the nine elective directors for the current year shall be selected in accordance with the provisions of sections thirty-one (31) and thirty-two (32) of the Corporation Law.

The Board of Directors shall present their annual report at such meetings.

List of stockholders.

Section 42. Fifteen (15) days before any annual meeting of stockholders, the Secretary shall prepare an alphabetical list of all the stockholders, setting forth the number of shares held by each, as appears in the stock ledger of the Bank.

Special meeting of stockholders.

Section 43. Special meetings of stockholders may be held at any time at the office of the Bank, upon resolution of the Board of Directors, or at the request of stockholders owning one-third (1/3) of all the stock of the Bank.

Calls for special meetings shall be issued fifteen (15) days in advance and shall specify the time, place, and object of the meeting, and no business other than that specified in the call shall be transacted at such meeting.

Notice of meetings: When purpose of the meeting must be stated in the notice.

Section 44. The Secretary of the Board shall

mail notices of each annual or special meeting to each stockholder and in addition shall publish notice of the intention to hold such meeting, for one (1) week, in two (2) local newspapers, one published in English and the other in Spanish, in the city of Manila. Whenever it is desired to amend or repeal any by-laws, or adopt new by-laws at a regular or special meeting, such purpose shall be stated in the notice.

Validity of proceedings in the meeting.

Section 45. The proceedings and the business transacted at any meeting of the stockholders shall be valid even if the meeting be improperly held or called, provided stockholders owning a majority of the stock are present or represented.

Right to vote: proxies.

Section 46. Each stockholder, or his authorized proxy shall be entitled to as many votes as there were shares registered in his name on the 31st day of January last preceding, and owned by him on the date of election. The manner of voting shall be in accordance with the Corporation Law.

Proxies shall be filed in the office of the Secretary at least five (5) days before the day set for the holding of the stockholders' meeting and such proxies shall not be recognized or accepted unless granted within the six (6) months next preceding the date on which said meeting is held.

Stock owned by the Government of the Philippine Islands. Board of Control.

Section 47. The voting power of all stock owned and controlled by the Government of the Philippine Islands is vested exclusively in the "Board of Control" composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives.

President and Secretary of the meeting.

Section 48. The President and Secretary of the Board shall be ex-officio chairman and secretary, respectively, of all meetings of stockholders.

ARTICLE XIII—DIRECTORS.

Number.

Section 49. The Board of Directors of the Bank shall be nine (9) in number, and shall be elected by the stockholders in accordance with the provisions of the Corporation Law.

Qualifications.

Section 50. No person shall qualify, nor shall be competent to act as Director of the Bank unless he is, at the time of election, and while he holds such office, the holder of record of at least one (1) share of its stock. Provided, That no Director or employee of any other bank shall be eligible as member of the Board of Directors of the Philippine National Bank.

Vacancies.

Section 51. Any vacancy in the Board of Directors may, with the approval of the Board of Control, be filled for the unexpired term by a majority vote of the remaining members. In the event of the membership of the Board falling below the number necessary for a quorum, a special meeting of the stockholders shall be called, and such number of directors shall be elected thereat as may be necessary to restore the membership of the Board to its full number.

Regular meetings.

Section 52. Regular meetings of the Board of Directors shall be held weekly in the office of the Bank in the City of Manila at such hour and day as the Board of Directors may select.

Special meetings.

Section 53. Special meetings of the Board of Directors may be held at any time in the office of the Bank in the city of Manila as hereinafter provided. Special meetings may be held at any time and place, and without notice, by unanimous consent of the members of the Board.

Notice of meetings.

Section 54. The Secretary shall notify in writing each member of the Board of all regular or special meetings, at least three (3) hours before any such meetings. No failure to give notice, or any

irregularity at any regular meeting, shall invalidate the same, or any proceeding thereat. In case of special meetings, the object thereof, need not be stated in the notice.

Quorum.

Section 55. A majority of the Board of Directors shall constitute a quorum, and a majority of the members in attendance at any Board meeting shall decide its action. A minority of the Board present at any regular or special meeting may, in the absence of a quorum, adjourn to a later date, but may not transact any business until a quorum has been secured.

Election of officers.

Section 56. Immediately after their election, the directors of the Bank must organize by the election of a President and one Vice-President, who must be from among their number, and the appointment of a Secretary who shall be a resident of the Philippine Islands and a citizen of the Philippine Islands or of the United States, and such other officers as they deem necessary.

Compensation of Directors.

Section 57. Each Director shall receive the sum of thirty pesos (₱30.00) as compensation for his attendance at any regular or special meeting of the Board of Directors: Provided, That whenever the President or Vice-President, by order of the Board of Directors, shall temporarily or permanently per-

form duties incumbent upon other officers or employees of the Bank, they shall be granted additional compensation; but the resolution of the Board of Directors shall not take effect until the written approval of the members of the Board of Control, has been obtained.

Power to pass by-laws.

Section 58. The Board of Directors shall have no power to amend, alter, or repeal these By-Laws, but may pass such additional by-laws in conformity therewith as may be necessary or convenient to facilitate the business of the Bank.

Executive committee.

Section 59. The President and two (2) members of the Board of Directors, to be elected at a regular or special meeting called for that purpose, shall constitute an Executive Committee which shall be a part of the permanent executive organization of the Bank, and shall, in the interim between meetings of the Board of Directors, perform such duties as the latter may confer upon it in accordance with law.

The Executive Committee shall regularly meet at such hour and day as it may determine. Special meetings may be held on call of the President or of the two (2) other members of the Committee. All of the members of the Committee must be duly notified of the meetings, and the President and one (1) of the two (2) members of the Committee shall constitute a quorum. Provided, That in case of tie

in the votes of the Committee, the vote of the President shall control. The Executive Committee shall keep due record of all meetings and actions and shall report all such meetings and actions at the next regular or special meeting of the Board.

Other Committees.

Section 60. The Board of Directors may also create such other committees as may be necessary with such powers as the Board may determine at the time of their creation, and the President shall appoint the members of such committee or committees. The meetings of all permanent committees shall be considered as sessions of the Board of Directors for the purpose of fixing the per diems of its members.

Order of business.

Section 61. The regular order of business at meetings of the Board of Directors shall be as follows:

1. Reading and disposal of any unapproved minutes.
2. Report of officers and committees.
3. Unfinished business.
4. New business.
5. Adjournment.

Powers and duties of the Board of Directors.

Section 62. The duties and powers of the Board of Directors shall be:

(a) To prescribe the manner of issuance and transfer of stock certificates.

(b) To determine, from time to time, the number and amount of circulating notes to be issued and put into circulation in accordance with the provisions of the charter of the Bank and these By-Laws, and the retirement of such issues of notes from circulation.

(c) To determine, from time to time, the number and amount of the mortgage bonds to be issued and sold in accordance with the provisions of the charter of the Bank and these By-Laws.

(d) To fix, from time to time, the rate of interest for loans and discounts, and make public announcement of the same at the head office.

(e) To authorize the establishment of branch banks or agencies in the United States and in other countries, at such points as may be determined upon by the Board. To establish branches in provincial capitals and in municipalities of the Philippine Islands, at such points as the Board may select. To define the powers and duties of all officers in all the branches either domestic or foreign.

(f) Upon the recommendation of the General Manager, to appoint, with the authorization of the proper Department first had, provincial or municipal treasurers as agents, cashier, or tellers of such branch banks as may be established in provincial capital and municipalities.

(g) With the approval of the Secretary of Jus-

tice, to employ attorneys in addition to the said Secretary of Justice.

(h) Upon the recommendation of the General Manager, to appoint and remove all such officers and employees whose appointment and removal are among the powers granted by law to the Board.

(i) To fix the amount of the bonds to be furnished by the officers and employees of the Bank.

(j) To enforce strict compliance with these By-Laws, and all regulations, orders, and resolutions.

(k) To examine and consider, at its meetings, the operations of the Bank.

(l) To prepare, with the aid of the General Manager, reports of the operations of the Bank.

(m) To examine and review the accounts, the general balance sheet, profit and loss statements, and, in general, all matters pertaining to operations of the Bank, and to approve the budget for the Bank.

(n) To fix, in accordance with the charter of the Bank, the dividends to be distributed to the stockholders.

(o) To receive and act upon all suggestions made by the General Manager of the Bank.

(p) To recommend to the stockholders, at any meeting, such measures as may be deemed desirable.

(q) To prescribe such rules and regulations as may be necessary for the proper operation of the Bank, and not in conflict with the charter of the Bank, the Corporation Law, or these By-Laws.

(r) To declare due and payable to the Bank

the unpaid subscription value of the shares by means of a resolution setting forth (1) percentage of the stock unpaid and due, and (2) the date on which delinquency shall commence.

Notice of such resolution shall be sent at least thirty (30) days in advance of the date on which the delinquency will begin.

ARTICLE XIV—OFFICERS.

Enumeration: President, Vice-President, Secretary, General Manager, Assistant General Manager, Cashier, Attorney, and Auditor: other officers.

Section 63. The officers of the Bank shall be the President, Vice-President, Secretary, General Manager, Assistant General Manager, Cashier, Attorney, Auditor, and such other executive officers as may be necessary.

The President, Vice-President, and Secretary shall be elected by the Board of Directors immediately after its organization, and shall hold office for the term of one (1) year, and until their respective successors are duly elected and qualified. The President and Vice-President shall be elected from among the members of the Board of Directors.

The President: duties and powers.

Section 64. The powers of the President shall be:

(a) To call the meetings of stockholders.

(b) To convene the Board of Directors whenever he may deem it necessary, either on his own

initiative, or upon the request of the General Manager, or of two (2) members of the Board.

(c) To preside as chairman over all the meetings of the stockholders, or of the Board of Directors.

(d) To sign stock certificates, real estate mortgage bonds and circulating notes: Provided, That when deemed advisable by the Board of Directors, such circulating notes and real estate bonds may bear the signature of the President engraved thereon.

(e) And, to perform all other functions assigned to him by law or by the Board of Directors.

The Vice-President: duties and powers: absence, disability or refusal to act of both the President and the Vice-President.

Section 65. The Vice-President shall familiarize himself with the affairs of the Bank, and in the absence, disability or refusal to act of the President shall possess all the powers and perform all the duties of that officer.

In case of the absence, inability, or refusal to act of both the President and the Vice-President, the member selected by the Board of Directors shall substitute the President in all his powers, obligations, duties, rights and functions.

The Secretary: his duties.

Section 66. There shall be a Secretary who shall be elected by the Board of Directors immediately after its organization or as soon thereafter as

may be convenient. The duties of the Secretary shall be as follows:

(a) To keep a book of minutes of the stockholders' meetings.

(b) To keep a book of minutes of the Board of Directors' meetings.

(c) To issue, at the direction of the President, all calls for stockholders' and directors' meetings.

(d) To have charge and custody of the seal of the Bank.

(e) To attest the signature of the President on the stock certificates.

(f) To attest, when necessary, all documents of the Bank.

(g) To keep the stock ledger and stock transfer books.

(h) To prepare, within the time limit established by these By-Laws, a complete alphabetical list of the stockholders entitled to vote, which list shall set forth the number of shares and votes of each. This list shall be open to inspection by any stockholder at the main office of the Bank until the annual meeting of the stockholders.

(i) To permit any stockholder, during office hours, to inspect the stock ledger and the stock certificate transfer book of the Bank.

(j) And to perform such other duties as the Board of Directors may direct.

The General Manager: powers and duties.

Section 67. The General Manager shall be ap-

pointed, either by contract or otherwise, by the Board of Directors with the advice and consent of the Board of Control, and may be removed in like manner. He shall be the chief executive of the Bank and shall receive an annual salary to be fixed by the Board of Directors, with the approval of the Board of Control.

The powers and duties of the General Manager shall be:

(a) To attend all the meetings of the Board of Directors and of its various committees, unless excused by the Board.

(b) To direct the operations of the Bank, in conformity with the resolutions, orders and regulations of the Board of Directors and in accordance with the provisions of the Bank's charter.

(c) To make, with the advice and consent of the Board of Directors, all contracts, on behalf of the Bank, and to enter into all necessary obligations by the charter of the Bank and these By-Laws required or permitted.

(d) To propose to the Board of Directors action with respect to operations not provided for in these By-Laws.

(e) To recommend to the Board of Directors the appointment and removal of all subordinate officers and employees of the Bank.

(f) To report weekly to the Board of Directors the operations of the Bank during the preceding week, and oftener, if required.

(g) To recommend to the Board of Directors changes in rates of discount, exchange, or of policy.

(h) To make loans on commercial paper for periods of time not to exceed four (4) months, and in sums not exceeding fifty thousand pesos (₱50,000.00), to any one person, company, corporation or firm, and submit a report on each such loan to the Board of Directors at its next succeeding meeting.

(i) To verify and approve the monthly balance sheet.

(j) To prepare all reports requested by the Board of Directors.

(k) To keep the Assistant General Manager informed, so far as may be, of all operations of the Bank, so that he may act instead of the General Manager in case of the absence or disability of the latter.

(l) To exercise all other powers of general supervision and administration usually attached to the office of the General Manager, or that may be prescribed by the Board.

(m) To submit to the Board of Directors within the first fifteen (15) days of January of each year a statement of net profits, and a detailed statement of expenditures of the Bank pertaining to the preceding year, and an estimate of the expenditures, including the purchase of equipment, for the ensuing year.

(n) And to perform all other duties or functions assigned to him by law.

Assistant General Manager: his powers and duties.

Section 68. The Assistant General Manager shall assist the General Manager and act in his stead in case of absence, inability, or refusal to act. He shall upon the recommendation of the General Manager, be appointed by the Board of Directors at a salary to be fixed by said Board, with the advice and consent of the Board of Control, and may be removed in like manner.

Cashier: powers and duties.

Section 69. The duties of the Cashier shall be as follows:

(a) To have in his custody and be responsible for all the funds and securities of the Bank.

(b) To keep a complete and correct account, on the books of the Bank, of its transactions, its accounts, obligations, and financial condition.

(c) To disburse such funds as may be necessary for the transactions of the Bank on order of the General Manager; such disbursement to be supported by properly accomplished receipts and vouchers.

(d) To sign all circulating notes and interest coupons in first mortgage real estate bond issued by the Bank: Provided, That when the Board of Directors deems it advisable such circulating notes or first mortgage real estate bonds and their interest

coupons may bear the signature of the Cashier engraved thereon.

(e) And to perform all such other duties and functions as may be assigned to him by the General Manager.

Attorney: Secretary of Justice ex-officio Attorney for the Bank: Additional attorneys.

Section 70. The Secretary of Justice shall be the Attorney for the Bank but whenever he deems it proper in a specific case, said officer may delegate his duties to the Attorney-General or Solicitor-General, the Fiscal of the City of Manila or any Provincial Fiscal. The Board of Directors, with the approval of the Secretary of Justice, shall have the power to employ such additional attorneys as may be necessary.

Auditor: Auditing Department of the Bank controlled by the Insular Auditor.

Section 71. The Insular Auditor shall be ex-officio Auditor of the National Bank, and shall, with the advice and consent of the Board of Control, appoint a representative who shall be chief of the Auditing Department of the Bank, all the other employees of the Auditing Department of the Bank, shall be appointed by the Insular Auditor, who, with the approval of the Board of Control, shall fix the salaries of the same as well as that of his representative, the chief of the Department. The operating expenses of the Department and the salaries and

traveling expenses of the employees thereof shall be payable by the Bank, and the Board of Directors shall make the necessary appropriation therefor. The representative of the Insular Auditor shall make a quarterly report on the condition of the Bank to the Governor-General of the Philippine Islands, through the Secretary of Finance, to the Board of Control, to the Insular Auditor, and to the Board of Directors of said Bank. The report shall contain among other things, a statement of resources and liabilities, including earnings and expenses, the account of capital stock, dividends paid, surplus reserve, and suspended and overdue paper carried in the Bank's assets, as of the day on which the statements are compiled.

Other officers.

Section 72. Upon the recommendation of the General Manager, the Board of Directors may appoint such other officers as may be necessary.

ARTICLE XV—BRANCHES OR AGENCIES.

Where established.

Section 73. Branches or agencies of the Bank may be established in the United tSates and in other countries and in provincial capitals and municipalities of the Philippine Islands, at such points as the Board of Directors may select.

Powers and functions of branches in the United States.

Section 74. The branches or agencies in the United States shall have the following functions:

(a) To receive, transmit and disburse any funds of the Philippine Government payable in the United States;

(b) To receive, transmit and disburse any funds of the United States Government which may be placed on deposit with, or entrusted to it;

(c) To receive, transmit and disburse any funds of individuals, firms, companies or corporations engaged in business with the Philippine Islands, or having interest therein;

(d) To engage in business, to the extent permitted by the laws of the United States, with the Federal Reserve Bank of the district in which said branches or agencies may be located, and to conduct a deposit and discount business with the said Federal Reserve Bank in accordance with the laws of the United States, and under the instructions of the Board of Directors of the Philippine National Bank;

(e) And to exercise any other functions authorized by the Board of Directors.

Branches in foreign countries.

Section 75. The branches or agencies established in countries other than the United States shall transact a general banking business subject to the control and direction of the General Manager and the Board of Directors in Manila.

Duties of branches in the United States and foreign countries.

Section 76. The branches established in the United States and in foreign countries shall send daily reports of their operations to the Central Office at Manila, and submit to periodical inspection by an auditor designated by the Board of Directors.

Powers conferred upon branches and agencies in the Philippine Islands.

Section 77. The branch banks in the Philippine Islands shall exercise only the powers conferred upon them by the Board of Directors as recommended by the General Manager, shall make detailed daily reports of their transactions to the General Manager at Manila, and shall, at any time, be subject to examination by an examiner or examiners of the Bank or of the Government of the Philippine Islands.

ARTICLE XVI—SUNDRY PROVISIONS

Seal.

Section 78. The corporate seal of the Bank shall consist of two (2) concentric circles, between which shall be the name "Philippine National Bank" and in the center, the coat of arms of the Government of the Philippine Islands, and such seal as impressed on the margin hereof is hereby adopted as the corporate seal of the Bank.

Legal existence of this Bank.

Section 79. The legal existence of the Bank shall be for a period of fifty (50) years, counting from the 18th day of February, 1921, unless such period be extended by the Philippine Legislature.

Amendment of these By-Laws.

Section 80. These By-Laws may be amended, repealed or modified, entirely, or in part, only at a meeting of stockholders by the affirmative vote of the stockholders representing a majority of the capital.

Business hours.

Section 81. The Bank shall be open for business from 10:00 o'clock a. m. to 3:00 o'clock p. m. on each day except Sundays or such days or parts of days as may be legal holidays, and at such other times as the Board of Directors may deem advisable.

Penalties for violation of these By-Laws.

Section 82. Any officer, director, or stockholder who shall disobey or violate any of the provisions of these By-Laws shall be fined in an amount not to exceed twenty pesos (₱20.00), such fine to be imposed by the Board of Directors and if not paid at the time, to be deducted from any salary or dividend then due or that may thereafter become due said person.

By virtue of the authority granted in a resolution passed by the affirmative vote of the stockhold-

ers representing more than two-thirds of all the subscribed capital stock, whether paid or unpaid, at the meeting of February 18, 1921, held in accordance with the provisions of Act No. 2938 of the Philippine Legislature, the foregoing By-Laws were adopted by the Board of Directors of the Philippine National Bank at their 200th regular meeting as the By-Laws of the said Philippine National Bank. Copy of the resolution is hereto attached as appendix "A".

BOARD OF DIRECTORS

(Sgd.) MIGUEL UNSON
President

(Sgd.) W. TRINIDAD
Vice-President

(Sgd.) MIGUEL CUADERNO

(Sgd.) W. H. BABBIT

(Sgd.) R. CORPUS

(Sgd.) E. J. WESTERHOUSE

(Sgd.) MILTON E. SPRINGER

(Sgd.) GEORGE SEAVER

ATTEST:
(Sgd.) GUILLERMO MARTINEZ
Secretary

APPROVED
BOARD OF CONTROL

(Sgd.) CHARLES E. YEATER
Acting Governor-General

(Sgd.) MANUEL L. QUEZON
President of the Senate

(Sgd.) SERGIO OSMEÑA
Speaker of the House of Representatives

(APPENDIX "A")

EXTRACT FROM THE MINUTES OF THE EXTRAORDINARY MEETING OF THE STOCKHOLDERS OF THE PHILIPPINE NATIONAL BANK HELD ON FEBRUARY 18, 1921, AT THE OFFICES OF THE BANK ON THE ESCOLTA, MANILA

x x x x x x x x

"*BY-LAWS.* The following resolution was unanimously adopted:

> RESOLVED, that the Board of Directors be and is hereby authorized to repeal the By-Laws in force at present and to adopt new by-laws in accordance with the provisions of Act 2938. Provided, that the By-Laws so adopted is approved by the Board of Control.

x x x x x x x x

I, GUILLERMO MARTINEZ, Secretary of Philippine National Bank, do hereby certify that the above and foregoing is a true and accurate excerpt taken from the minutes of extraordinary meeting of Stockholders of the Philippine National Bank, duly convened and held at its offices on the Escolta, Manila, on February 18, 1921, at which a quorum was present and participated.

IN WITNESS WHEREOF, I have affixed hereunto my official signature and the seal of the institution in the City of Manila, this 18th day of March, 1921.

(Sgd.) GUILLERMO MARTINEZ
Secretary.

TABLE OF CONTENTS

OF THE

BY LAWS

OF THE

PHILIPPINE NATIONAL BANK

	Page
ARTICLE I—CAPITAL	28-30
Section 1—Shares: first issue: second issue par value	28
Section 2—Stock to be sold to the Government of the Philippine Islands: disposition of stock not subscribed for after June 30, 1921	28
Section 3—Government always to own majority stock in the Bank.....	29
Section 4—Payment of stock subscribed for	29
ARTICLE II—CERTIFICATE OF STOCK.	30-35
Section 5—Certificates: form of certificates of partially paid stock: assignment: form of certificates of fully paid stock: assignment	30
Section 6—Other requirements in the Certificate: data to be entered in the stubs of the stock book.....	33
Section 7—Manner of transferring certificates of stock: stock transfer book.	34
Section 8—Issue of a new certificate to replace one lost or mutilated.....	34

	Page
ARTICLE III—DOMICILE	35
Section 9	35
ARTICLE IV—TRANSACTIONS OF THE BANK IN GENERAL	35
Section 10	35
ARTICLE V—AGRICULTURAL LOANS	35-38
Section 11—Limit: securities must be approved by the Attorney for the Bank	35
Section 12—Terms and conditions	36
ARTICLE VI—ISSUE OF FIRST MORTGAGE REAL ESTATE BONDS	38-41
Section 13—Amount: conditions: redemption	38
ARTICLE VII—EXCHANGE AND OTHER BANKING OPERATIONS	41-46
Section 14	41
(a)—Deposits	41
(b)—Purchase and discount of negotiable instruments	41
(c)—Loans discounts on harvested and stored crops	42
(d)—Loans on standing crops	42
(e)—Loans to government entities	43
(f)—Purchase and sale of negotiable instruments	43
(g)—Collection of negotiable instruments	43
(h)—Trust funds	43
(i)—Safe deposit	43
(j)—Negotiation of drafts	43

	Page
(k)—Purchase and sale of gold and silver	44
(l)—Loans on documentary bills of exchange	44
(m)—Loans on vessels	44
(n)—Advances in general	44
(o)—Purchase and sale of securities on commission	45
(p)—Government agencies	45
(q)—Acceptance of commercial bills of exchange	45
(r)—Dollar Exchange	45
(s)—Purchase and sale of first mortgages upon farm lands	46
(t)—Purchase and sale of first mortgages real estate bonds issued by the Bank	46
(u)—Purchase and sale of government bonds	46
(v)—Savings accounts	46
(w)—All other acts	46
ARTICLE VIII—CIRCULATING NOTES.	47-51
Section 15—Denominations: size and legend	47
Section 16—Amount of circulating notes which may be issued: against the Bank's capital and surplus: against gold coin held by the Bank	47
Issue of Emergency circulating notes under Act No. 2938	48
Issue of Emergency circulating notes under Act No. 2924	48

	Page
pital in the form of dividends or otherwise	61
Section 36—Penalties for the violation of the provisions of the Bank's charter	61
ARTICLE XI—DISPOSITION OF NET PROFITS	62-63
Section 37—Creation and maintenance of the legal reserve: net profits how ascertained: bad debts defined	62
Section 38—Distributions of dividends: limitation to the dividends that may be declared: when dividends cannot be declared	62
Section 39—Undivided profits	63
ARTICLE XII—STOCKHOLDERS	63-66
Section 40—Powers	63
Section 41—Annual meeting of stockholders: election of Directors: report the Board of Directors	63
Section 42—List of stockholders	64
Section 43—Special meeting of stockholders	64
Section 44—Notice of meetings: when purpose of the meeting must be stated in the notice	64
Section 45—Validity of proceedings in the meeting	65
Section 46—Right to vote: proxies	65
Section 47—Stock owned by the Government of the Philippine Islands: Board of Control	66
Section 48—President and Secretary of the meeting	66

	Page
ARTICLE XIII—DIRECTORS	66-73
Section 49—Number	66
Section 50—Qualifications	66
Section 51—Vacancies	67
Section 52—Regular meetings	67
Section 53—Special meetings	67
Section 54—Notice of meetings	67
Section 55—Quorum	68
Section 56—Election of officers	68
Section 57—Compensation of Directors.	68
Section 58—Power to pass by-laws	69
Section 59—Executive Committee	69
Section 60—Other committees	70
Section 61—Order of business	70
Section 62—Powers and duties of the Board of Directors	70
ARTICLE XIV—OFFICERS	73-80
Section 63—Enumeration: President, Vice-President, Secretary, General Manager, Assistant General Manager, Cashier, Attorney and Auditor: other officers	73
Section 64—The President: duties and powers	73
Section 65—The Vice-President: duties and powers: absence, disability or refusal to act of both the President and the Vice-President	74
Section 66—The Secretary: his duties..	74
Section 67—The General Manager: powers and duties	75

	Page
Section 68—Assistant General Manager: his powers and duties	78
Section 69—Cashier: powers and duties	78
Section 70—Attorney; Secretary of Justice ex-officio Attorney for the Bank: additional attorneys	79
Section 71—Auditor: Auditing Department of the Bank controlled by the Insular Auditor	79
Section 72—Other officers	80
ARTICLE XV—BRANCHES OR AGENCIES	80-82
Section 73—Where established	80
Section 74—Powers and functions of branches in the United States	81
Section 75—Branches in Foreign Countries	81
Section 76—Duties of branches in the United States and foreign countries	82
Section 77—Powers conferred upon branches and agencies in the Philippine Islands	82
ARTICLE XVI—SUNDRY PROVISIONS.	82-84
Section 78—Seal	82
Section 79—Legal existence of this Bank	83
Section 80—Amendment of these By-Laws	83
Section 81—Business hours	83
Section 82—Penalties for violation of these By-Laws	83

EXHIBIT C.

MINUTES OF A SPECIAL MEETING OF THE SHAREHOLERS OF THE PHILIPPINE NATIONAL BANK, HELD JANUARY 17TH, 1927.

Pursuant to the request of the shareholders owning more than eighty per centum of the outstanding shares and a resolution of the Board of Directors of the Philippine National Bank adopted in accordance therewith, a special meeting of the shareholders of that corporation was called to be held at 3:00 o'clock p. m. on January 17th, 1927, at the office of the Bank, Masonic Building, Escolta, Manila, Philippine Islands. At the time and place designated for holding the meeting there were present the Governor-General of the Philippine Islands, representing the Government of the Philippine Islands as the owner of 97,332 shares of the stock of the Philippine National Bank, and more than twenty persons owning shares or representing the owners of shares.

The President of the Board of Directors, the Honorable Rafael Corpus, was present, acting as Chairman of the meeting and Mr. Leon Ancheta, the Secretary of the Board of Directors, was likewise present, acting as Secretary of the meeting. President Corpus called the meeting to order, stat-

ing that pursuant to the requirements of the by-laws timely notices of this special meeting had been sent to all shareholders of the Bank and had been published in the newspapers. He then directed the Secretary to read the roll call. The Secretary read the roll call, from which it appeared that of the 100,000 shares of stock outstanding 97,416 shares were represented at the meeting, including the 97,332 shares owned and standing in the name of the Government of the Philippine Islands, which said shares were represented by His Excellency, Leonard Wood, the Governor-General of the Philippine Islands. After the reading of the roll call the Secretary, upon the instruction of the President, read a letter addressed to the President of the Bank by the Honorable Manuel L. Quezon, President of the Senate, and the Honorable Manuel Roxas, Speaker of the House of Representatives, protesting against the holding of the special meeting upon the ground that the same had been improperly called by the Board of Directors. Upon the reading of this letter and another letter of similar purport written for and on behalf of certain absent shareholders, and after an answer to the same had been given verbally by Mr. F. C. Fisher, one of the shareholders present suggested to the Chair the absence of a quorum. Thereupon President Corpus stated that in his opinion the shares of the Government of the Philippine Islands in the Philippine National Bank can be voted only by the Board of Control es-

tablished by Section 4 of the Charter of the Bank, embodied in Act 2938 of the Philippine Legislature; that the Governor-General alone is without authority to vote the shares on behalf of the Government of the Philippine Islands; and that the other members of the Board of Control, namely, the Honorable Manuel L. Quezon and the Honorable Manuel Roxas, being absent from the meeting, the shares of the Philippine Government were not properly represented at the meeting and that being so there was no quorum. After the President had made this announcement Mr. F. C. Fisher, one of the shareholders by whom the request for this special meeting was signed, addressed the meeting, stating that in his opinion the ruling of the President as to the absence of a quorum was erroneous and that the meeting had been properly called, giving reasons for that opinion. He suggested that all stockholders or representatives of stockholders present who were of the same opinion should remain and continue the meeting by the election of a temporary chairman and a temporary secretary, and proceed with the transaction of the business for which it had been called. President Corpus then stated that he must declare the meeting adjourned for the lack of a quorum, and thereupon withdrew, together with several of the shareholders or representatives of shareholders then present.

Thereupon, on motion by Mr. F. C. Fisher, seconded by Colonel Hugh C. Smith, the Honorable

Miguel Romualdez was unanimously elected Chairman *pro tempore;* and upon motion of Mr. F. C. Fisher, seconded by Mr. Antonio Opisso, Mr. C. W. Franks was unanimously elected Secretary *pro tempore* of the meeting.

The Honorable Miguel Romualdez, Chairman *pro tempore*, then called the meeting to order and directed the Secretary *pro tempore* to read the call upon which this meeting was being held and to take a roll call of the shareholders present. The Secretary then read the call, as follows:

"PHILIPPINE NATIONAL BANK
NOTICE OF SPECIAL MEETING OF THE SHAREHOLDERS

To the Shareholders of the
Philippine National Bank:

A request having been filed by the Governor-General, purporting to have been made by him on behalf of the Government of the Philippine Islands, as the owner of 97,332 shares of the stock of this corporation, and by five other shareholders holding (9) shares, that a special meeting of the stockholders be held for the following purposes:

(a) To remove Directors Baldomero Roxas, Catalino Lavadia and Gregorio Agoncillo;

(b) To elect directors to fill the vacancies created by such removals, if made;

(c) To elect a director to fill the vacancy created by the resignation of Director A. Gideon; and

(d) To consider the advisability of repealing Section 51 of the By-Laws;

and this request purporting to have been made on behalf of stockholders holding more than two-thirds of the outstanding shares entitled to vote, the Board of Directors, by resolution adopted at a meeting held the 28th day of December, 1926, have resolved to convene a special meeting of the shareholders of this corporation, for the purposes above mentioned, to be held at the principal office of the Philippine National Bank, Masonic Temple Building, Escolta, Manila, Philippine Islands, at three o'clock p. m., January 17th, 1927; of which meeting notice is hereby given pursuant to the provisions of the Corporation Law and the By-Laws of the Philippine National Bank.

Manila, December 28, 1926.

(Sgd.) LEON ANCHETA,
Secretary."

The Secretary *pro tempore* then read the roll, and responses showed that the stockholders present in person and represented by proxies were as follows:

Names of Shareholders	*No. of Shares*	*By Whom Represented*
Government of the Philippine Islands	97,332	His Excellency, Leonard Wood, Governor-General of the Philippine Islands.
F. C. Fisher	1	In person
Hugh C. Smith	1	In person
C. M. Cotterman	1	In person
Mateo Herrera	2	In person
Delfin Jaranilla	1	In person
Manuel de Yriarte	1	In person
Antonio Escamilla	2	In person
L. M. Heras	5	In person
John Gordon	1	In person
R. R. Ely	1	In person
Halstead Dorey	1	In person
H. L. Heath	1	In person
John R. Wilson	1	In person
A. Gideon	1	In person
J. P. Heilbronn	6	In person
Miguel Romualdez	1	In person
C. W. Franks	1	In person
Concepcion de Velasco	4	Antonio Opisso
Albina Tuason	1	Antonio Opisso
Emilio Aguinaldo	1	Antonio Escamilla
Emilio Aguinaldo	1	Romarico Agcaoili
Benedictine Fathers	31	Miguel Romualdez
Ong Jon Chuan	13	Miguel Romualdez
	97,413	

After the roll call the Secretary *pro tempore* stated that there were present in person or by proxy shareholders owning 97,413 shares out of the one hundred thousand shares of stock outstanding. Thereupon the Chairman *pro tempore* declared that there was a quorum present and that the meeting was ready for the transaction of business.

His Execellency, Leonard Wood, the Governor-General of the Philippine Islands, then offered the following resolution:

> RESOLVED, That the By-Laws of the Philippine National Bank be amended by striking out Section 51 thereof.

The motion of the Governor-General for the adoption of the foregoing resolution was seconded by Mr. C. M. Cotterman, Mr. F. C. Fisher then requested that voting upon the resolution offered by the Governor-General and his second be by written ballot and that the Chair appoint two inspectors of election for the purpose of receiving the ballots of the persons present and counting and reporting upon their votes. Thereupon the Chairman *pro tempore* appointed Messrs. Hugh C. Smith and Antonio Opisso inspectors of election for the purpose of receiving the ballots cast at the meeting, canvassing the same, and reporting the result of such canvass to the Chair.

Thereupon the resolution proposed by the Governor-General and his second was voted upon by the written ballots by all persons present and the

ballots having been received and inspected by the canvassers, they reported to the Chair that the result of the balloting was as follows:

In favor of the resolution 97,413 votes were cast; and

Against the resolution no votes were cast.

There upon the Chairman *pro tempore* declared that the resolution had been adopted.

Mr. F. C. Fisher then offered the following resolution:

RESOLVED, That Messrs. Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia be removed from office as directors of the corporation.

Mr. Fisher's motion for the adoption of this resolution was seconded by Colonel Smith. A vote upon the resolution was then taken by written ballot of the shareholders present in person and represented by proxies and these ballots having been received and canvassed by the inspectors Messrs. Smith and Opisso, they reported to the Chairman *pro tempore* that the result of the balloting was as follows:

In favor of the adoption of the resolution for the removal of the directors 97,411 votes were cast, including the 97,332 votes cast on behalf of the Government of the Philippine Islands by the Governor-General; and

Against the resolution no votes were cast. (Mr. C. M. Cotterman did not vote.)

Thereupon the Chairman *pro tempore* declared that the resolution had been adopted and that Messrs. Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia had been removed from their offices as members of the Board of Directors of this corporation.

The Chairman *pro tempore* then announced that the next order of business would be the nomination and election of shareholders to fill the four existing vacancies in the Board of Directors of the Philippine National Bank created by the removal by the stockholders at this meeting of Directors Agoncillo, Roxas and Lavadia, and by the resignation of Director A. Gideon.

His Excellency, Leonard Wood, Governor-General of the Philippine Islands, on behalf of the Government of the Philippine Islands, nominated the following named shareholders as candidates for election to the four existing vacancies in the Board of Directors of the Philippine National Bank:

Mr. Leon M. Heras
Mr. Manuel Yriarte
Mr. John Gordon
Mr. A. Gideon

The nominations were seconded by General Halstead Dorey. On motion of Mr. Cotterman seconded by Mr. Opisso it was thereupon unanimously directed that nominations for director be closed.

The shareholders present then proceeded to cast their ballots in writing for the candidates for elec-

tion to the Board of Directors of the Philippine National Bank so placed in nomination, and the said ballots having been canvassed by the inspectors of election, Messrs. Smith and Opisso, said inspectors reported to the Chair that the result of the balloting was as follows:

For the election of Mr. L. M. Heras 97,408 votes were cast;
For the election of Mr. M. Yriarte 97,409 votes were cast;
For the election of Mr. John Gordon 97,410 votes were cast;
For the election of Mr. A. Gideon 97,410 votes were cast;

these votes including the 97,332 votes pertaining to the shares of the Government of the Philippine Islands in the Philippine National Bank cast by the Governor-General on behalf of the Philippine Government in favor of each of the candidates above named. Thereupon the Chairman *pro tempore* declared that the persons above named, viz.:

L. M. Heras,
M. Yriarte,
John Gordon, and
A. Gideon

had each received the number of votes reported by the inspectors of election and had been duly elected to membership on the Board of Directors of the Philippine National Bank.

There being no further business to transact the

meeting, on motion duly seconded and unanimously carried, was adjourned without day.

(Sgd.) M. ROMUALDEZ,
Chairman pro tempore.

ATTEST:

(Sgd.) C. W. FRANKS,
Secretary pro tempore.

We, the undersigned shareholders and proxies of shareholders present at the special meeting of the Philippine National Bank held at 3:00 o'clock p. m. on January 17th, 1927, hereby certify that we have read the foregoing minutes of the said special meeting and we hereby approve the same.

GOVERNMENT OF THE
PHILIPPINE ISLANDS,

By:.....
Governor-General of the
Philippine Islands.

On the 27th day of January, 1927, the Court issued the following order:

(CAPTION AND TITLE OMITTED)

Mr. Jose Abad Santos and others,
Attorneys for the Defendants.

GREETINGS:—

WHEREAS, this Court on the 26th instant approved a resolution, which is quoted below:

"Considering the petition filed in case G. R. No. 27225, The Government of the P. I. vs. Gregorio Agoncillo, et als., praying that after proper proceeding a judgment be entered declaring that the defendants and each of them are not entitled to membership in the Board of Directors of the Philippine National Bank, and that they and each of them be ousted and altogether excluded from the said offices and perpetually enjoined from exercising any of the powers inherent therein, and that Messrs. Manuel Yriarte, John Gordon and A. Gideon be inducted into the said offices, it is ordered that the respondents be required to demur or answer said petition within ten (10) days from notice hereof and from the receipt of copy of said petition."

NOW, THEREFORE, You are hereby ordered to demur or answer within ten days from the receipt of this summons with the copy of the petition.

GIVEN by the HONORABLE E. FINLEY JOHNSON, Acting Chief Justice of the Supreme Court of the Philippine Islands this 27th day of January of 1927.

(Sgd.) V. ALBERT,
Clerk, Supreme Court, P. I.

On the 7th day of February, 1927, the defendants presented the following answer to the complaint:

(CAPTION AND TITLE OMITTED)
ANSWER

Come now the defendants in the above-entitled

cause, by their undersigned attorneys, and answering plaintiff's complaint hereby

I

Admit the allegations of fact contained in paragraphs II, III, IV, V, VI, VII, X, XI, XII, XIII, XV, XVI, XVII, XVIII, XXIV, XXV, XXVI, XXVII, XXVIII, and XXX of the said complaint;

II

Deny each and every other allegation in said complaint not expressly admitted herein; and

BY WAY OF SPECIAL DEFENSE, defendants aver:

1. That the Philippine National Bank is a banking corporation duly organized and existing under and by virtue of the provisions of Act 2612 as amended by Acts 2747 and 2938 of the Philippine Legislature; and that the provisions of the Corportion Law of the Philippine Islands in so far as they are not contrary to or inconsistent with the provisions of said Act 2612, as amended, are made applicable to the said Philippine National Bank;

2. That defendants are and at all times hereinafter mentioned were duly acting as directors of the Philippine National Bank, having been previously duly elected as such in accordance with the provisions of the corporate charter and by-laws of said Bank;

3. That Section 4 of said Act 2612, as amended, in part provides:

> "x x x The voting power of all the stock of the National Bank owned and controlled by the Government of the Philippine Islands shall be vested exclusively in a board, the short title of which shall be 'Board of Control,' composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives."

4. That on or about November 9, 1926, the Governor-General of the Philippine Islands issued Executive Order No. 37 reading as follows:

> "EXECUTIVE ORDER
> No. 37
>
> Whereas it is held in an opinion of the Judge Advocate General of the United States Army, confirmed by an opinion of the Attorney-General of the United States, received at the Office of the Executive, November seventh, nineteen hundred and twenty-six, that the provisions of the statutes passed by the Philippine Legislature creating a 'Board of Control' or 'Committee' and enumerating the duties and powers thereof, with respect to certain corporations in which the Insular Government is the owner of stock, are nullities; that the remaining portions of said statutes are valid; that the duties imposed by said statutes upon said Board or Committee are executive in their nature, and subject to the provisions of the Organic Act relating to the executive functions; that said executive duties and powers may be performed as in other cases not specifically provided for by law.

Now, therefore, acting under authority of said opinions, the duties and powers heretofore exercised by said 'Board of Control' or 'Committee' shall, from and after this date, be exercised solely by the Governor-General pursuant to the executive power vested in him by the Organic Act.

(Sgd.) LEONARD WOOD,
Governor-General."

5. That on or about the 22nd day of December, 1926, at a meeting of the Board of Directors of the Philippine National Bank, the resignation of A. Gideon as a member of said Board having been previously accepted, a motion was presented to the effect that the Board of Directors convene a special meeting of the stockholders for the purpose of filling the vacancy thus created in said Board; that in presenting said motion the mover stated that the purpose of calling a special meeting of the stockholders was to provide a test case for the courts to pass on the question of the validity of the law creating the Board of Control; and that in view of the importance of the question it was then decided that the consideration of said motion be postponed until the next meeting of the Board of Directors to be held on December 28, 1926;

6. That at the next meeting of the Board of Directors of said Bank held on the 28th day of December, 1926, the motion for the convening of a special meeting of the stockholders referred to in paragraph 5 hereof was defeated;

7. That at the same meeting of the Board of Directors held on December 28, 1926, the motion referred to in paragraphs 5 and 6 hereof having been disapproved, the following proceedings took place, all as appears in the minutes of said meeting, to wit:

> *Special Stockholders' Meeting—Philippine National Bank*—Director Cotterman stated that as a result of the action of the Board on his motion (See Res. No. 267 of December 28, 1926) it became his painful duty to be a messenger of a petition signed by His Excellency, the Governor-General, in representation of the Government of the Philippine Islands and other five stockholders of the Bank. Thereupon, Director Cotterman handed the petition to the President. Said petition which was read to the Board in English and translated into Spanish, follows:
>
> > "Pursuant to the provisions of Section 34 of the Corporation Law (Act 1459) demand is hereby respectfully made by the undersigned shareholders, the registered owners of more than eighty (80) per centum of the outstanding shares of the stock of this corporation entitled to be voted, that a special meeting of the shareholders be called, to be held at three o'clock p. m., of the 17th day of January, 1927, at the office of the corporation, Masonic Temple Building, Escolta, Manila, P. I., for the purpose of voting upon the removal of Messrs. Baldomero Roxas, Catalino Lavadia and Gregorio Agoncillo from their offices as direc-

tors and the election at the same time and place, of other qualified persons to fill the vacancies created, if the said directors or either of them shall be removed from office at said special meeting; and for the purpose of filling the vacancy now existing due to the resignation of Director Gideon; and for the further purpose of considering the advisability of the repeal of Section Fifty-one (51) of the By-Laws.

"You are hereby required to give or cause to be given to each of the shareholders of this corporation notice of the time, place and purposes of the said special meeting, such notice to be given in the manner prescribed by Section 44 of the By-Laws and by Section 29 of the Corporation Law.

"You will please take notice that in the event of your failure or refusal to take the action hereby requested, within forty-eight hours from the delivery of this demand, such special meeting will be called and notice thereof given by one or more of the undersigned shareholders, pursuant to the provisions of Section 34 of the Corporation Law.

Shareholders	*No. of Shares*
The Government of the Philippine Islands,	
By (Sgd.) Leonard Wood,	
Governor-General	97,332
(Sgd.) F. C. Fisher	5

Shareholders		*No. of Shares*
(Sgd.)	H. L. Heath.....	1
„	J. L. Headington..	1
„	J. R. Wilson.....	1
„	John Gordon	1"

Director Cotterman moved that a special meeting of the stockholders be held in accordance with the petition submitted.

Director Lavadia said: "The By-Laws of the Bank specifically says that to call a special meeting of the stockholders same should be made at the request of stockholders owning one-third of all the stock of the Bank. In the petition submitted, it appears that the Governor-General is included assuming representation of all the shares of stock owned by the Government. I question the legality of the representation assumed by the Governor-General because there is a similar case pending in the court and I think we should not anticipate judicial judgment but to act in accordance therewith when the judgment shall have been rendered. In the meantime, I think we should adhere to the Charter of the Bank. I therefore believe that the petitioners do not have the number of shares of stock necessary to call for a special meeting."

Director Hind: "I just want to point out that in case the proper authority refuses to call a meeting, any individual can call the meeting."

Director Heilbronn: "There is no use discussing the matter. It should be let to take its own course in the courts. I believe a special meeting should be called according to the

petition which is presented in the manner and purposes mentioned in said petition."

Thereupon, several members of the Board asked that the question of calling a special meeting of the stockholders in accordance with the petition submitted, be voted upon. The President asked the members to cast their votes which resulted as follows:

Director Cotterman—Yes.
" Hind —Yes.
" Agoncillo —There is a new point. I say, yes, so that my removal is sure and made promptly.
" Lavadia —No.
" Valle Cruz—No.
" Roxas —No.
" Heilbronn—Yes.

The President announced that the motion to call a special meeting in accordance with the petition was approved four members voting in favor and three against."

8. That at said meeting of the Board of Directors of the Philippine National Bank held on the 28th day of December, 1926, referred to in paragraphs 6 and 7 hereof, there were present all of the remaining eight directors of said Bank; that as shown by the records of said meeting as set forth in paragraph 7 hereof, only four members of said Board voted in favor of the motion for the convening of a special meeting of the stockholders of said Bank in pursuance of the petition purporting to have

been presented on behalf of certain stockholders of said Bank; that Section 55 of the By-Laws of the Philippine National Bank provides:

> "SECTION 55. A majority of the Board of Directors shall constitute a quorum, and a majority of the members in attendance at any Board meeting shall decide its action. A minority of the Board present at any regular or special meeting may, in the absence of a quorum, adjourn to a later date, but may not transact any business until a quorum has been secured."

9. That Section 47 of the By-Laws of said Bank provides:

> "SECTION 47. The voting power of all stock owned and controlled by the Government of the Philippine Islands is vested exclusively in the 'Board of Control' composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives."

10. That by virtue of Section 4 of Act 2612, as amended, and the above-quoted section of the By-Laws of the Philippine National Bank, the petition for the calling of a special meeting of the stockholders as set out in paragraph 7 hereof is without legal force or effect in so far as the stock of the Government of the Philippine Islands is concerned, said petition having been signed on behalf of the Government of the Philippine Islands only by the Governor-General in his capacity as such and not by the Board of Control;

11. That Section 43 of the By-Laws of said Bank provides:

> "SECTION 43. Special meeting of stockholders may be held at any time at the office of the Bank, upon resolution of the Board of Directors, or at the request of stockholders owning one-third (1/3) of all the stock of the Bank.
>
> "Calls for special meeting shall be issued fifteen (15) days in advance and shall specify the time, place, and object of the meeting, and no business other than that specified in the call shall be transacted at such meeting."

12. That as alleged in paragraphs 8 and 9 hereof, there exists no valid resolution of the Board of Directors nor a valid petition of stockholders representing at least one-third of all the stock of the Philippine National Bank upon which a special meeting of the stockholders of said Bank, in accordance with Section 43 of the By-Laws above quoted, could be convened; nor was there any valid written demand by the stockholders representing at least one-half of the corporate stock of said Philippine National Bank for the calling of the special meeting of the stockholders for the purpose of removing directors as required in Section 34 of the Corporation Law of the Philippine Islands;

13. That notwithstanding the facts above set forth, the Secretary of the Philippine National Bank, purporting to act under the authority of the Board of Directors of the Philippine National Bank, upon

resolution thereof alleged to have been adopted at its meeting of December 28, 1926, the record of which proceeding is fully set forth in paragraph 7 hereof, did, on December 28, 1926, issue a supposed call for a special meeting of the stockholders of the Philippine National Bank to be held at its principal office in the Masonic Temple Building, Escolta, Manila, at 3 o'clock p. m., on January 17, 1927, for the purposes therein specified, to wit:

(a) To remove Directors Baldomero Roxas, Catalino Lavadia and Gregorio Agoncillo;
(b) To elect directors to fill the vacancies created by such removals, if made;
(c) To elect a director to fill the vacancy created by the resignation of Director A. Gideon; and
(d) To consider the advisability of repealing Section 51 of the By-Laws;

14. That on or about January 17, 1927, at 3 o'clock in the afternoon, pursuant to the notice aforementioned, various stockholders of the Philippine National Bank met at its office, Masonic Temple Building, Manila; that after the said meeting had been called to order, a protest against the holding of the meeting signed by the President of the Senate and the Speaker of the House of Representatives as members of the Board of Control was sub-

mitted to the meeting, which protest reads as follows:

"January 17, 1927.

Hon. Rafael Corpus
President
Philippine National Bank
Manila

S i r :

Having received notice of a special meeting of the stockholders of the Philippine National Bank appearing to have been issued by the Secretary of said Bank upon the authority of a resolution alleged to have been adopted at a meeting of the Board of Directors on December 28, 1926, we hereby strongly protest against the holding of such meeting.

FIRST, Because there exists at present no valid or lawful reason for the removal of directors Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia, or either of them, or for the amendment of Section 51 of the By-Laws of the Bank and we know that the petition for the calling of this meeting was presented for the sole purpose of affording the parties signing the said petition an opportunity at this time to raise the issue, as regards the Bank, of the validity of the law creating the Board of Control, when there is now pending before the Supreme Court of the Philippine Islands an action wherein a similar question will necessarily be determined;

SECOND, Because the petition for the calling of such meeting purporting to be made on behalf of the Government of the Philippine Islands as the holder of more than 80% of

the stock of the Bank is signed only by the Governor-General asserting sole representation of said stock, when the charter and the by-laws of said Bank exclusively confer such representation upon the Board of Control of which we are members, and therefore, such petition, in so far as the stock of the Government of the Philippine Islands is concerned, is absolutely without legal force and effect, and should not have been acted upon by the Board of Directors;

THIRD, Because the alleged resolution of the Board of Directors authorizing the calling of such special meeting received the favorable vote of only four members of said Board out of eight members who were present at the meeting, and Section 55 of the By-Laws of the Bank provides that 'a majority of the members in attendance at any Board meeting shall decide its action,' consequently the alleged resolution authorizing the calling of this meeting is a nullity; and

FOURTH, Because the call for the meeting is issued under no legal authority as required by Section 43 of the By-Laws of the Bank, and therefore no meeting should be held thereunder.

You are therefore requested to refrain from holding any meeting of stockholders under the call above mentioned, and you are hereby notified that the undersigned will contest the validity of any action taken of such

meeting, should you insist in holding the same in spite of this protest.

Respectfully,

(Sgd.) MANUEL L. QUEZON,
President of the Senate.
Member, Board of Control.

(Sgd.) MANUEL ROXAS,
Speaker, House of Representatives.
Member, Board of Control."

that thereafter a stockholder present at the meeting raised the question of a quorum and the President of the Philippine National Bank, then presiding the meeting by virtue of Section 48 of the By-Laws of said Bank, ruled as follows:

> Section 4 of Act No. 2938, which constitutes the corporate charter of this Bank, provides that the voting power of all the stock of this Bank owned and controlled by the Government of the Philippine Islands shall be vested exclusively in a board known as the Board of Control, composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives. Section 47 of the By-Laws of the Bank, duly approved by the Board of Directors and by the Board of Control, and acted upon by the stockholders of the Bank for several years, also provides that the voting power of all the stock owned and controlled by the Government of the Philippine Islands is vested exclusively in the Board of Control composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives.

> It is my understanding that at present time, there is pending before the Supreme Court of the Philippine Islands a case wherein the validity of a similar provision in a charter of another corporation has been placed in issue; it is not our purpose to anticipate the decision in this case. Until the decision in that case is rendered, or until that particular provision of the Charter and By-Laws is repealed or otherwise amended, it is the duty of this Bank as a corporation to strictly abide by its corporate Charter and its By-Laws. Otherwise, the Bank will incur a breach of the Charter, and furthermore violate the rights of the minority stockholders.
>
> For this reason, I am of the opinion that the stock of the Government of the Philippine Islands can only be counted as duly represented in this meeting, if the Board of Control referred to in its corporate charter and its By-Laws appears before this meeting as representing said stock.

and that the said President of the Bank as chairman of the meeting, on the strength of the ruling above set forth, declared the meeting adjourned for lack of a quorum, over the protest of the Governor-General; that the proceedings at said meeting are all correctly recorded in the minutes thereof as kept by the Secretary of the Philippine National Bank, a copy whereof is hereto attached marked as Exhibit "A" and made a part hereof;

15. That notwithstanding the adjournment of the meeting of the stockholders as above set forth and after said adjournment, certain other stockhold-

ers remained and insisted upon holding a so-called meeting by virtue of the purported call above mentioned and attempted to transact the business for which the said meeting had been supposedly convened; that at this so-called meeting of the stockholders, the following private stockholders were present or represented by proxy:

Name of Shareholders	*No. of Shares*	*By Whom Represented*
F. C. Fisher	1	In person
Hugh S. Smith	1	In person
C. M. Cotterman	1	In person
Mateo Herrera	2	In person
Delfin Jaranilla	1	In person
Manuel de Yriarte	1	In person
Antonio Escamilla	2	In person
L. M. Heras	5	In person
John Gordon	1	In person
R. R. Ely	1	In person
Halstead Dorey	1	In person
H. L. Heath	1	In person
John R. Wilson	1	In person
A. Gideon	1	In person
J. P. Heilbronn	8	In person
Miguel Romualdez	1	In person
C. W. Franks	1	In person
Concepcion de Velasco	4	Antonio Opisso
Albina Tuason	1	Antonio Opisso
Emilio Aguinaldo	1	Antonio Escamilla
Emilio Aguinaldo	1	Romarico Agcaoili
Benedictine Fathers	31	Miguel Romualdez
Ong Jon Chuan	13	Miguel Romualdez

and that His Excellency, Leonard Wood, was also present at said so-called meeting and in his capacity

as Governor-General of the Philippine Islands, asserted sole representation of the 97,332 shares of stock held by the Government of the Philippine Islands in said Philippine National Bank, all contrary to the provisions of Section 4 of Act 2612, as amended, and of Section 47 of the By-Laws of said Philippine National Bank;

16. That out of the stockholders present at the so-called meeting as listed in paragraph 15 hereof, four of them, to wit, F. C. Fisher, John Gordon, H. L. Heath and John R. Wilson are among those five private stockholders who, with the Governor-General, signed the petition for the calling of the special meeting set forth in paragraph 6 hereof;

C. M. Cotterman and J. P. Heilbronn are two of the directors of the Philippine National Bank who voted in favor of the motion to call a special meeting of stockholders of said Bank pursuant to the said petition;

F. C. Fisher, Hugh C. Smith and Delfin Jaranilla are counsel and attorney, respectively, for the plaintiff herein;

R. R. Ely, Halstead Dorey and C. W. Franks are all members of the staff of the Governor-General;

Hugh C. Smith, Delfin Jaranilla, Antonio Escamilla, L. M. Heras, R. R. Ely and Halstead Dorey became stockholders of record long after the said purported call for the special meeting had been issued and shortly prior to the date set for said meeting;

Hugh C. Smith, Delfin Jaranilla, R. R. Ely and Halstead Dorey, with one share of stock for each, are transferees of all but one of the five shares of stock formerly held by F. C. Fisher, counsel for plaintiff herein and one of the stockholders who signed the petition for the calling of the meeting;

Emilio Aguinaldo was represented at said meeting by two proxies, namely Antonio Escamilla and Romarico Agcaoili;

And A. Gideon is the same A. Gideon who resigned as director of said Philippine National Bank on December 22, 1926, and who, as set forth in paragraphs XXIII and XVII of plaintiff's complaint, was again elected for the same vacancy caused by his own resignation, and who thereafter presented himself at the meeting of the Board of Directors of said Philippine National Bank on the 21st day of January, 1927, and then and there made demand that he be permitted to participate in said meeting as a member of said Board of Directors;

17. That at the so-called meeting of the stockholders referred to in paragraph 13 hereof, a resolution was offered by F. C. Fisher, counsel for the plaintiff herein, as follows:

> "RESOLVED, That Messrs. Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia be removed from office as directors of the corporation."

that, as alleged in paragraph XXII of plaintiff's complaint, 97,411 votes were cast for the adoption of the

foregoing resolution, including the vote of the Governor-General, claiming the representation of 97,332 shares of the Government of the Philippine Islands in the Philippine National Bank, all in violation of the provisions of the corporate charter and by-laws of said Philippine National Bank;

18. That there exists no valid or lawful reason for the removal of the herein defendants as directors of said Bank and that no cause has been given or charges preferred against them or any of them which would justify the action taken at the said so-called meeting of the stockholders; that the removal of these defendants is purely an arbitrary act on the part of the Governor-General and the other private stockholders mentioned in paragrphs 15 and 16 hereof, and was done for the sole purpose of raising the issue and formulating a moot case, as regards the Philippine National Bank, on the legality of Section 4 of Act 2612, as amended, vesting the power to vote the stock of the Government of the Philippine Islands in the said Philippine National Bank in the Board of Control composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives;

19. That by reason of the foregoing, the attempted removal of these defendants from their offices as directors of the Philippine National Bank is illegal and in contravention not only of Act 2612, as amended, constituting the Charter of the Philippine National Bank and of the By-Laws of said

Bank, but also of the Corporation Law of the Philippine Islands;

WHEREFORE, defendants pray that the complaint herein be dismissed, with costs against plaintiff.

Manila, Philippine Islands, February 7, 1927.

(Sgd.) JOSE ABAD SANTOS
(Sgd.) ARANETA & ZARAGOZA
(Sgd.) CHAS. E. TENNEY
(Sgd.) CAMUS, DELGADO & RECTO
(Sgd.) MARIANO H. DE HOYA
Attorneys for the Defendants,
Manila.

COPY RECEIVED the 7th day of February, 1927.
(Sgd.) DELFIN JARANILLA,
Attorney-General.

EXHIBIT A.

MINUTES OF THE SPECIAL MEETING OF STOCKHOLDERS OF THE PHILIPPINE NATIONAL BANK HELD ON JANUARY 17, 1927, AT ITS OFFICES ON THE ESCOLTA, MANILA.

The President called the meeting to order at 3:00 o'clock p. m. and instructed the Secretary to call the roll.

The Secretary reported that there are outstanding 100,000 shares of stock of the Philippine National Bank under Act No. 3174 of the Philippine Legislature. Of these, 97,332 shares are owned by the Government of the Philippine Islands and 2,668 shares, by private stockholders, according to the Bank's stock ledgers. The following private stockholders were present in person:

Stockholder	*No. of Shares*
Delfin Jaranilla	1
A. G. Escamilla	2
Miguel Romualdez	1
C. M. Cotterman	1
John R. Wilson	1
L. M. Heras	5
Halstead Dorey	1
H. L. Heath	1
A. Gideon	1
Serapion Valle Cruz	1
Carried forward	15

Stockholder	*No. of Shares*
Brought forward	15
F. C. Fisher	1
R. R. Ely	1
John Gordon	1
Manuel de Yriarte	1
C. W. Franks	1
Vicente T. Fernandez	1
Hugh C. Smith	1
Rafael Corpus	1
Mateo Herrera	2
Geronimo Santiago	1
J. P. Heilbronn	8
Total	34

The following stockholders were represented by proxy:

Stockholder	*No. of Shares*	*Proxy*
Concepcion Velasco	4	Antonio M. Opisso
Albina Tuason	1	—do—
Emilio Aguinaldo	1	Romarico Agcaoili
Emilio Aguinaldo	1	A. G. Escamilla
Corporacion de P. P. Benedictinos	31	Miguel Romualdez
Ong Jan Chuan	13	—do—
Victor Buencamino	7	Mauricio Cruz
Salvador Laguda	1	Ceferino J. de Ortega
Catalino Lavadia	1	Jose Yulo
Total	60	

The Secretary further reported that His Excellency, Leonard Wood, Governor-General of the Phil-

ippine Islands, was present and claimed in his capacity of Governor-General of the Philippines exclusive representation of the 97,332 shares of stock owned by the Government of the Philippine Islands.

The Chair announced that he has received a communication from the Honorable Manuel L. Quezon, President of the Senate, and the Honorable Manuel Roxas, Speaker of the House of Representatives, and forthwith instructed the Secretary to read same before the meeting.

The Secretary read the letter in full which is as follows:

"January 17, 1927.

Hon. Rafael Corpus,
President,
Philippine National Bank,
Manila.

Sir:

Having received notice of a special meeting of the stockholders of the Philippine National Bank appearing to have been issued by the Secretary of said Bank upon the authority of a resolution alleged to have been adopted at a meeting of the Board of Directors on December 28, 1926, we hereby strongly protest against the holding of such meeting,

FIRST, Because there exists at present no valid or lawful reason for the removal of directors Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia, or either of them, or for the amendment of Section 51 of the By-Laws of the Bank and we know that the petition for the calling of this

meeting was presented for the sole purpose of affording the parties signing the said petition an opportunity at this time to raise the issue, as regards the Bank, of the validity of the law creating the Board of Control, when there is now pending before the Supreme Court of the Philippine Islands an action wherein a similar question will necessarily be determined;

SECOND, Because the petition for the calling of such meeting purporting to be made on behalf of the Government of the Philippine Islands as the holder of more than 80% of the stock of the Bank is signed only by the Governor-General asserting sole representation of said stock, when the charter and the by-laws of said Bank exclusively confer such representation upon the Board of Control of which we are members, and, therefore, such petition, in so far as the stock of the Government of the Philippine Islands is concerned, is absolutely without legal force and effect, and should not have been acted upon by the Board of Directors;

THIRD, Because the alleged resolution of the Board of Directors authorizing the calling of such special meeting received the favorable vote of only four members of said Board out of eight members who were present at the meeting, and Section 55 of the by-laws of the Bank provides that 'a majority of the members in attendance at any Board meeting shall decide its action,' consequently the alleged resolution authorizing the calling of this meeting is a nullity; and

FOURTH, Because the call for the meeting is

issued under no legal authority as required by Section 43 of the by-laws of the Bank and therefore no meeting should be held thereunder.

You are therefore requested to refrain from holding any meeting of stockholders under the call above mentioned, and you are hereby notified that the undersigned will contest the validity of any action taken of such meeting, should you insist in holding the same in spite of this protest.

Respectfully,

(Sgd.) MANUEL L. QUEZON,
President of the Senate.
Member, Board of Control.

(Sgd.) MANUEL ROXAS,
Speaker, House of Representatives.
Member, Board of Control."

The Chair also announced that he has just received a communication from Paredes, Buencamino & Yulo, Attorneys for Sergio Osmeña, Esperanza Limjap and the Estate of Estefania de Osmeña, and instructed the Secretary to read same before the meeting. Said letter which was read by the Secretary in full is attached hereto and made a part of these minutes.

Mr. Geronimo Santiago raised the question of quorum and asked the President to determine whether there was quorum or not.

Justice Fisher stated that before the meeting proceeds further he would like to be heard regarding the communication of President Quezon

and Speaker Roxas, he (Justice Fisher) being one of the signers of the petition for the calling of a special meeting.

Regarding the first ground of the protest, Justice Fisher said that the removal of directors of a corporation is a question that the stockholders themselves decide; that the Corporation Law does not require that specific statement of the grounds for the removal of directors should be made; that the position of a director of a corporation is similar to that of a party holding a power-of-attorney for another party and such power-of-attorney may be withdrawn by the party giving it at the latter's pleasure; that while it is true that there is pending in the Supreme Court an issue regarding the validity of the Board of Control, that fact is of no importance in this connection. It does not prevent any stockholder from exercising his rights as such.

As to the second ground of the protest, regarding the claim of the Governor-General for exclusive representation of the Government stock in the Bank, Justice Fisher said it raised the direct question of the validity of the Board of Control which is a matter for the courts to decide.

As to the third point, Justice Fisher called attention to certain well known precedents supporting the legality of the resolution of the Board calling for this special meeting. He cited the case of a corporation's board of directors in which four members attended a meeting. In a matter where two

of the members voted favorably and one against and the Chairman announced the resolution carried, the courts held that the resolution was in order as it implied that the President was in favor of the resolution. He therefore believed that the allegation contained in the protest that the resolution calling for a special meeting was a nullity cannot be sustained. Furthermore even if there had been no resolution whatever, Justice Fisher said that the Corporation Law authorized stockholders holding at least one-half (½) of the shares entitled to be voted, to call a special meeting for the purpose of removing directors and no action on the part of the Board of Directors is required in such circumstances.

As to the fourth ground, Justice Fisher said it did not need comment as it is similar to the third.

As to the letter of Paredes, Buencamino & Yulo, Justice Fisher said the grounds of protest are similar to those contained in the communication of President Quezon and Speaker Roxas.

Mr. Geronimo Santiago rose for a point of order stating that before discussing any matter like the protest of President Quezon and Speaker Roxas, the President should first determine whether there is a quorum or not.

Mr Romarico Agcaoili said that the mere fact that the call for a special meeting was issued by the President showed that he recognizes the right of the Governor-General to vote the stock of the Government and moved that the letter of protest be set

aside. Mayor Miguel Romualdez seconded the motion.

The Chair explained that the meeting has not yet entered into a discussion of business; that he will presently decide the question of whether there is a quorum or not. He said he just wanted the stockholders to have opportunity to express their opinion whether or not there existed a quorum; and so, as a matter of fairness, he let Justice Fisher to give his points of view on the questions raised by the letters above referred to, since these questions, or one of them at least, affect the question of quorum just raised by Mr. Santiago.

Mr. Agcaoili said it was unfair for the President to declare a lack of quorum as if he does not recognize the Governor-General to vote the Government shares of stock he could have said so before this time and saved the stockholders, who are here, the trouble of coming to the meeting. Mr.Agcaoili insisted on his motion that the letter of protest be filed and that the meeting starts the consideration of its business.

Col. Hugh C. Smith seconded the motion of Mr. Agcaoili but said that he did not subscribe to the remarks of Mr. Agcaoili as same are unfair to the President.

The Chairman ruled Mr. Agcaoili out of order; then ruled as follows:

> Section 4 of Act No. 2938, which constitutes the corporate charter of this Bank, pro-

vides that the voting power of all the stock of this Bank owned and controlled by the Government of the Philippine Islands shall be vested exclusively in a board known as the Board of Control, composed of the Governor-General, the President of the Senate and the Speaker of the House of Representatives. Section 47 of the By-Laws of the Bank, duly approved by the Board of Directors and by the Board of Control, and acted upon by the stockholders of the Bank for several years, also provides that the voting power of all the stock owned and controlled by the Government of the Philippine Islands is vested exclusively in the Board of Control composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives. It is my understanding that at the present time, there is pending before the Supreme Court of the Philippine Islands a case wherein the validity of a similar provision in a charter of another corporation has been placed in issue; it is not our purpose to anticipate the decision in this case. Until the decision in that case is rendered, or until that particular provision of the Charter and By-Laws is repealed or otherwise amended, it is the duty of this Bank as a corporation to strictly abide by its corporate Charter and its By-Laws. Otherwise, the Bank will incur a breach of that Charter, and furthermore violate the rights of the minority stockholders.

For this reason, I am of the opinion that the stock of the Government of the Philippine Islands can only be counted as duly represented in this meeting, if the Board of Control referred to in its corporate Charter and its

By-Laws appears before this meeting as representing said stock.

Thereupon, the Chairman adjourned the meeting for lack of quorum.

Justice Fisher said that he protested in his behalf and that of the Governor-General to the President's ruling that there is no quorum present. He insisted that there is a quorum because the Board of Directors by majority vote called for this special meeting at the instance of the petitioners. He said that if the Chairman believed there was no quorum that he should vacate the Chair.

The Chairman said that he would not vacate the Chair but would adjourn the meeting and thereupon announced the meeting adjourned for lack of a quorum.

(Sgd.) LEON ANCHETA,
Secretary.

APPROVED:

(Sgd.) R. CORPUS,
Chairman.

On the 7th day of February, 1927, the following motion was presented:

UNITED STATES OF AMERICA

IN THE SUPREME COURT OF THE PHILIPPINE ISLANDS

THE GOVERNMENT OF THE PHILIPPINE ISLANDS,
Plaintiff,
vs.
GREGORIO AGONCILLO, BALDOMERO ROXAS and CATALINO LAVADIA,
Defendants,
GERONIMO SANTIAGO VICTOR BUENCAMINO, GREGORIO SINJIAN, EUFEMIA TAPIA, MARIA SALUD TAPIA, LADISLAO TAPIA and DIONISIO JAKOSALEM, as Administrator of the Estate of Pedro Cui,
Intervenors.

G. R. No. 27225
QUO WARRANTO

MOTION TO INTERVENE

Come now the intervenors in the above-entitled proceedings, by their undersigned attorneys, and respectfully represent to this Honorable Court that, as shown by the complaint in intervention hereto attached and made a part hereof, they are interested in the matter in litigation between the parties to

these proceedings and in the success of the defendants in resisting plaintiff's complaint, and that due to the nature of such interest their intervention herein is absolutely necessary for the reasonable protection thereof.

WHEREFORE, your petitioners pray that they be allowed to intervene in these proceedings and that the complaint in intervention hereto attached be considered as filed and served upon the parties hereto as of the date of the service of the order granting this motion, and that the said parties be ordered to plead thereto in accordance with tne rules of this Honorable Court.

Manila, Philippine Islands, February 7th, 1927.

(Sgd.) PAREDES, BUENCAMINO & YULO.

(Sgd.) ROSS, LAWRENCE & SELPH.
Attorneys for the Intervenors,
420 Pacific Building, Manila.

RECEIVED COPY this
7th day of February,
1927:
(Sgd.) DELFIN JARANILLA,
Attorney-General.
(Sgd.) F. C. FISHER.
(Sgd.) HUGH S. SMITH.
Special Counsel for
Plaintiff,
Manila.

On the same date, to wit, February 7, 1927, the following complaint in intervention was filed:

(CAPTION AND TITLE OMITTED)

Now come the intervenors above named, by their undersigned attorneys, and complaining of plaintiff herein, respectfully aver:

I

That the intervenors are all of legal age, and that the intervenors Geronimo Santiago, Victor Buencamino and Gregorio Sinjian are residents of the City of Manila, Ladislao Tapia, Eufemia Tapia and Maria Salud Tapia are residents of Tanauan, Batangas, and Dionisio Jakosalem, a resident of Cebu, Cebu, and the duly appointed and qualified administrator of the estate of Pedro Cui, a stockholder of record of the Philippine National Bank.

That the defendants Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia are all of age and residents, the first of Taal, Batangas, and the last two of the City of Manila; that said defendants are and at all times hereinafter mentioned were duly acting as directors of the Philippine National Bank, having been previously duly elected as such in accordance with the provisions of the corporate charter and by-laws of said Bank.

That plaintiff is a stockholder of record of the Philippine National Bank holding 97,332 shares of the capital stock of said Bank;

II

That the Philippine National Bank is a banking corporation duly organized and existing under and by virtue of the provisions of Act 2612, as amended by Acts 2747 and 2938 of the Philippine Legislature; and that by virtue of Section 41 of said Act 2612, as amended, the provisions of the Corporation Law of the Philippine Islands in so far as they are not contrary to or inconsistent with the provisions of said Act 2612, as amended, are made applicable to the said Philippine National Bank;

III

That the intervenors are all stockholders of record of the Philippine National Bank, being the owners altogether of 713 shares of stock having a par value of ₱71,300.00, which said shares of stock constitute over 25% of the total number of shares of said Philippine National Bank at present held by private parties other than the Government of the Philippine Islands;

IV

That on or about the 22nd day of December, 1926, at a meeting of the Board of Directors of said Philippine National Bank, after the resignation of A. Gideon as a member of said Board had been accepted, a motion was presented to the effect that the Board of Directors convene a special meeting of the stockholders of said Bank for the purpose of filling the vacancy thus created in said Board and of

amending Section 51 of the By-Laws of said Bank; that in presenting said motion the mover stated that the purpose of calling a special meeting of the stockholders was to provide a test case in the courts on the question of the validity of the law creating the Board of Control; and that in view of the importance of the question it was then decided that the consideration of said motion be postponed until the next meeting of the Board of Directors to be held on December 28, 1926;

V

That at the next meeting of the Board of Directors of said Bank held on the 28th day of December, 1926, the motion for the convening of a special meeting of the stockholders for the purpose of filling the vacancy caused by the resignation of the said A. Gideon and of the amendment of Section 51 of the By-Laws as set forth in paragraph IV hereof, was defeated;

VI

Thereafter, at the same meeting of the Board of Directors held on December 28, 1926, the motion referred to in paragraphs IV and V hereof having been disapproved, the following proceedings took place, all as appears in the minutes of said meeting, to wit:

> *Special Stockholders' Meeting—Philippine National Bank.*—Director Cotterman stated that as a result of the action of the Board on his motion (See Res. No. 267 of Dec-

ember 28, 1926) it became his painful duty to be a messenger of a petition signed by His Excellency, the Governor-General, in representation of the Government of the Philippine Islands and other five stockholders of the Bank. Thereupon, Director Cotterman handed the petition to the President. Said petition which was read to the Board in English and translated into Spanish, follows:

> " Pursuant to the provisions of Section 34 of the Corporation Law (Act 1459) demand is hereby respectfully made by the undersigned shareholders, the registered owners of more than eighty (80) per centum of the outstanding shares of the stock of this corporation entitled to be voted, that a special meeting of the shareholders be called, to be held at three o'clock p. m., of the 17th day of January, 1927, at the office of the corporation, Masonic Temple Building, Escolta, Manila, P. I., for the purpose of voting upon the removal of Messrs. Baldomero Roxas, Catalino Lavadia and Gregorio Agoncillo from their offices as directors and the election at the same time and place, of other qualified persons to fill the vacancies created, if the said directors or either of them shall be removed from office at said special meeting; and for the purpose of filling the vacancy now existing due to the resignation of Director Gideon; and for the further purpose of considering the advisability of the repeal of Section Fifty-one (51) of the By-Laws.

"You are hereby required to give or cause to be given to each of the shareholders of this corporation notice of the time, place and purposes of the said special meeting, such notice to be given in the manner prescribed by Section 44 of the By-Laws and by Section 29 of the Corporation Law.

"You will please take notice that in the event of your failure or refusal to take the action hereby requested, within forty-eight hours from the delivery of this demand, such special meeting will be called and notice thereof given pursuant by one or more of the undersigned shareholders, to the provisions of Section 34 of the Corporation Law.

Shareholders	*No. of Shares*
The Government of the Philippine Islands, By (Sgd.) Leonard Wood, Governor-General	97,332
(Sgd.) F. C. Fisher	5
" H. L. Heath	1
" J. L. Headington .	1
" J. R. Wilson	1
" John Gordon	1"

Director Cotterman moved that a special meeting of the stockholders be held in accordance with the petition submitted.

Director Lavadia said: "The By-Laws of the Bank specifically says that to call a special meeting of the stockholders same should be made at the request of stockholders owning

one-third of all the stock of the Bank. In the petition submitted, it appears that the Governor-General is included assuming representation of all the shares of stock owned by the Government. I question the legality of the representation assumed by the Governor-General because there is a similar case pending in the court and I think we should not anticipate judicial judgment but to act in accordance therewith when the judgment shall have been rendered. In the meantime, I think we should adhere to the Charter of the Bank. I therefore believe that the petitioners do not have the number of shares of stock necessary to call for a special meeting."

Director Hind: "I just want to point out that in case the proper authority refuses to call a meeting, any individual can call the meeting."

Director Heilbronn: "There is no use discussing the matter. It should be let to take its own course in the courts. I believe a special meeting should be called according to the petition which is presented in the manner and purposes mentioned in said petition."

Thereupon, several members of the Board asked that the question of calling a special meeting of the stockholders in accordance with the petition submitted, be voted upon. The President asked the members to cast their votes which resulted as follows:

Director Cotterman—Yes.
" Hind —Yes.
" Agoncillo —There is a new point. I say, yes, so that my re-

moval is sure and made promptly.

Director Lavadia —No.
" Valle Cruz—No.
" Roxas —No.
" Heilbronn —Yes.

The President announced that the motion to call a special meeting in accordance with the petition was approved four members voting in favor and three against.

VII

That at said meeting of the Board of Directors of said Philippine National Bank held on the 28th day of December, 1926, referred to in paragraphs V and VI hereof, there were present all of the remaining eight directors of said Bank; that as shown by the records of said meeting as set forth in paragraph VI hereof, only four members of said Board voted in favor of the motion for the convening of a special meeting of the stockholders of said Bank in pursuance of the petition purporting to have been presented on behalf of certain stockholders of said Bank; that Section 55 of the By-Laws of the Philippine National Bank provides:

"SECTION 55. A majority of the Board of Directors shall constitute a quorum, and a majority of the members in attendance at any Board meeting shall decide its action. A minority of the Board present at any regular or special meeting may, in the absence of a quorum, adjourn to a later date, but may not

transact any business until a quorum has been secured."

VIII

That Section 4 of Act 2612, as amended by Acts 2747 and 2938, which constitutes the corporate charter of the Philippine National Bank, in part provides:

> "x x x The voting power of all the stock of the National Bank owned and controlled by the Government of the Philippine Islands shall be vested exclusively in a board, the short title of which shall be 'Board of Control,' composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives."

that Section 47 of the By-Laws of said Bank also provides:

> "SECTION 47. The voting power of all stock owned and controlled by the Government of the Philippine Islands is vested exclusively in the 'Board of Control' composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives."

that by virtue of the foregoing provisions of the corporate charter and By-Laws of said Bank, the petition referred to in paragraphs VI and VII hereof in so far as it was signed solely by the Governor-General asserting sole representation of the stock held by the Government of the Philippine Islands

in the Philippine National Bank, is as to said stock of the Government of the Philippine Islands, without legal force or effect;

IX

That Section 43 of the By-Laws of said Bank provides:

> "SECTION 43. Special meetings of stockholders may be held at any time at the office of the Bank, upon resolution of the Board of Directors, or at the request of stockholders owning one-third (1/3) of all the stock of the Bank.
>
> "Calls for special meetings shall be issued fifteen (15) days in advance and shall specify the time, place, and object of the meeting, and no business other than that specified in the call shall be transacted at such meeting."

That as alleged in paragraphs VII and VIII hereof, there exists no valid resolution of the Board of Directors nor a valid petition of stockholders representing at least one-third of all the stock of the Philippine National Bank upon which a special meeting of the stockholders of said Bank in accordance with Section 43 of the By-Laws above quoted could be convened; nor was there any valid written demand by the stockholders representing at least one-half of the corporate stock of said Philipine National Bank for the calling of the special meeting of the stockholders for the purpose of removing directors

as required in Section 34 of the Corporation Law of the Philippine Islands;

X

That notwithstanding the facts above set forth, the Secretary of the Philippine National Bank, purporting to act under the authority of the Board of Directors of the Philippine National Bank, upon resolution thereof alleged to have been adopted at its meeting of December 28, 1926, the record of which proceeding is fully set forth in paragraph VI hereof, did, on December 28, 1926, issue a call for a special meeting of the stockholders of the Philippine National Bank to be held at its principal office Masonic Temple Building, Escolta, Manila, at 3 o'clock p. m. on January 17, 1927, for the purposes therein specified, as follows:

(a) To remove Directors Baldomero Roxas, Catalino Lavadia and Gregorio Agoncillo;

(b) To elect directors to fill the vacancies created by such removals, if made;

(c) To elect a director to fill the vacancy created by the resignation of Director A. Gideon; and

(d) To consider the advisability of repealing Section 51 of the By-Laws;

XI

That on or about January 17, 1927, at 3 o'clock in the afternoon pursuant to the notice aforementioned various stockholders of the Philippine Nation-

al Bank met at its office, Masonic Temple Building, Manila, but on account of the absence of a quorum, the President of the Philippine National Bank then presiding the meeting by virtue of Section 48 of the By-Laws of the Philippine National Bank, declared the meeting adjourned; that the proceedings at said meeting are all correctly recorded in the minutes thereof as kept by the Secretary of the Philippine National Bank, a copy whereof is hereto attached marked as Exhibit "A" and made a part hereof;

XII

That notwithstanding the adjournment of the meeting of the stockholders as above set forth and after said adjournment certain other stockholders insisted upon holding a so-called meeting by virtue of the purported call above mentioned and attempted to transact the business for which the said meeting had been convened; that at this so-called meeting of the stockholders, the following private stockholders were present or represented by proxy:

Name of Shareholders	*No. of Shares*	*By Whom Represented*
F. C. Fisher	1	In person
Hugh C. Smith	1	In person
C. M. Cotterman	1	In person
Mateo Herrera	2	In person
Delfin Jaranilla	1	In person
Manuel de Yriarte	1	In person
Antonio Escamilla	2	In person
L. M. Heras	5	In person

Names of Shareholders	*No. of Shares*	*By Whom Represented*
John Gordon	1	In person
R. R. Ely	1	In person
Halstead Dorey	1	In person
H. L. Heath	1	In person
John R. Wilson	1	In person
A. Gideon	1	In person
J. P. Heilbronn	8	In person
Miguel Romualdez	1	In person
C. W. Franks	1	In person
Concepcion de Velasco	4	Antonio Opisso
Albina Tuason	1	Antonio Opisso
Emilio Aguinaldo	1	Antonio Escamilla
Emilio Aguinaldo	1	Romarico Agcaoili
Benedictine Fathers	31	Miguel Romualdez
Ong Jon Chuan	13	Miguel Romualdez

and that His Excellency, Leonard Wood, was also present at said so-called meeting and in his capacity as Governor-General of the Philippine Islands, asserted sole representation of the 97,332 shares of stock held by the Government of the Philippine Islands in said Philippine National Bank, all contrary to the provisions of Section 4 of Act 2612, as amended, and of Section 47 of the By-Laws of said Philippine National Bank;

XIII

That among the stockholders present at the so-called meeting as listed in paragraph XII hereof, F. C. Fisher, John Gordon, H. L. Heath and John

R. Wilson are among those five private stockholders who with the Governor-General, signed the petition for the calling of the special meeting;

C. M. Cotterman and J. P. Heilbronn are two of the directors of the Philippine National Bank who voted in favor of the motion to call a special meeting of stockholders of said Bank pursuant to the said petition;

F. C. Fisher, Hugh C. Smith and Delfin Jaranilla are counsel and attorney, respectively, for the plaintiff herein;

R. R. Ely, Halstead Dorey and C. W. Franks are all members of the staff of the Governor-General;

Hugh C. Smith, Delfin Jaranilla, Antonio Escamilla, L. M. Heras, R. R. Ely and Halstead Dorey became stockholders of record long after the said purported call for the special meeting had been issued and shortly prior to the date set for said meeting;

Hugh C. Smith, Delfin Jaranilla, R. R. Ely and Halstead Dorey are transferees of all but one of the five shares of stock formerly held by F. C. Fisher, one of the stockholders who signed the petition for the calling of the meeting;

Emilio Aguinaldo was represented at said meeting by two proxies, namely Antonio Escamilla and Romarico Agcaoili;

And A. Gideon is the same A. Gideon who resigned as director of said Philippine National Bank on December 22, 1926, and who, as set forth in par-

agraphs XXIII and XXVII of plaintiff's complaint, was again elected for the vacancy caused by his resignation, and thereafter presented himself at the meeting of the Board of Directors of said Philippine National Bank on the 21st day of January, 1927, and then and there made demand that he be permitted to participate in said meeting as a member of said Board of Directors;

XIV

That at the so-called meeting of the stockholders referred to in paragraph XII hereof, a resolution was offered by F. C. Fisher, counsel for the plaintiff herein, as follows:

> "RESOLVED, That Messrs. Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia be removed from office as directors of the corporation."

that, as alleged in paragrph XXII of plaintiff's complaint, 97,411 votes were cast for the adoption of the foregoing resolution, including the vote of the Governor-General, claiming the representation of 97,332 shares of the Government of the Philippine Islands in the Philippine National Bank, all in violation of the provisions of the corporate charter and By-Laws of said Philippine National Bank;

XV

That there exists no valid or lawful reason for the removal of Baldomero Roxas, Gregorio Agoncillo and Catalino Lavadia as directors of said Bank and

that no cause has been given or charges preferred against the said directors which would justify the action taken at the said so-called meeting of the stockholders; that the removal of said defendants is purely an arbitrary act on the part of the Governor-General and the other private stockholders as above set forth, and was done for the sole purpose of raising the issue and formulating a moot case, as regards the Philippine National Bank, on the legality of Section 4 of Act 2612, as amended, vesting the power to vote the stock of the Government of the Philippine Islands in the said Philippine National Bank in the Board of Control composed of the Governor-General, the President of the Senate and the Speaker of the House of Representatives;

XVI

That by reason of the foregoing, the attempted removal of the defendants Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia from their office as directors of the Philippine National Bank is illegal and in contravention not only of Act 2612, as amended, constituting the charter of the Philippine National Bank and of the By-Laws of said Bank, but also of the Corporation Law of the Philippine Islands;

XVII

That the said attempted removal of directors Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia, resulting in the present controversy, will

inevitably affect the management and administration of the business and affairs of the Philippine National Bank and will result in the impairment of its credit, reputation and stability as a financial institution, to the irreparable damage of intervenors and other stockholders of said Bank.

WHEREFORE, intervenors pray that judgment be rendered herein dismissing plaintiff's complaint and declaring as null and void all action taken at the so-called meeting of the stockholders of the Philippine National Bank on January 17, 1927, particularly the resolution purporting to have been passed at said meeting removing directors Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia from their office as directors of the Philippine National Bank, with costs against the plaintiff.

Manila, Philippine Islands, February 7th, 1927.

(Sgd.) PAREDES, BUENCAMINO & YULO.
(Sgd.) ROSS, LAWRENCE & SELPH.
Attorneys for the Intervenors,
420 Pacific Building, Manila.

EXHIBIT A

MINUTES OF THE SPECIAL MEETING OF STOCKHOLDERS OF THE PHILIPPINE NATIONAL BANK HELD ON JANUARY 17, 1927

AT ITS OFFICES ON THE ESCOLTA, MANILA.

The President called the meeting to order at 3:00 o'clock p. m. and instructed the Secretary to call the roll.

The Secretary reported that there are outstanding 100,000 shares of stock of the Philippine National Bank under Act No. 3174 of the Philippine Legislature. Of these, 97,332 shares are owned by the Government of the Philippine Islands and 2,668 shares, by private stockholders, according to the Bank's stock ledgers. The following private stockholders were present in person:

Stockholder	*No. of Shares*
Delfin Jaranilla	1
A. G. Escamilla	2
Miguel Romualdez	1
C. M. Cotterman	1
John R. Wilson	1
L. M. Heras	5
Halstead Dorey	1
H. L. Heath	1
A. Gideon	1
Serapion Valle Cruz	1
Carried forward	15

Stockholder	*No. of Shares*
Brought forward	15
F. C. Fisher	1
R. R. Ely	1
John Gordon	1
Manuel de Yriarte	1
C. W. Franks	1
Vicente T. Fernandez	1
Hugh C. Smith	1
Rafael Corpus	1
Mateo Herrera	2
Geronimo Santiago	1
J. P. Heilbronn	8
Total	34

The following stockholders were represented by proxy:

Stockholder	*No. of Shares*	*Proxy*
Concepcion de Velasco	4	Antonio M. Opisso
Albina Tuason	1	—do—
Emilio Aguinaldo	1	Romarico Agcaoili
Emilio Aguinaldo	1	A. G. Escamilla
Corporacion de P. P. Benedictinos	31	Miguel Romualdez
Ong Jan Chuan	13	—do—
Victor Buencamino	7	Mauricio Cruz
Salvador Laguda	1	Ceferino J. de Ortega
Catalino Lavadia	1	Jose Yulo
Total	60	

The Secretary further reported that His Excellency, Leonard Wood, Governor-General of the Phil-

ippine Islands, was present and claimed in his capacity of Governor-General of the Philippines exclusive representation of the 97,332 shares of stock owned by the Government of the Philippine Islands.

The Chair announced that he has received a communication from the Honorable Manuel L. Quezon, President of the Senate, and the Honorable Manuel Roxas, Speaker of the House of Representatives, and forthwith instructed the Secretary to read same before the meeting.

The Secretary read the letter in full which is as follows:

"January 17, 1927.

Hon. Rafael Corpus,
President,
Philippine National Bank,
Manila.

Sir:

Having received notice of a special meeting of the stockholders of the Philippine National Bank appearing to have been issued by the Secretary of said Bank upon the authority of a resolution alleged to have been adopted at a meeting of the Board of Directors on December 28, 1926, we hereby strongly protest against the holding of such meeting,

FIRST, Because there exists at present no valid or lawful reason for the removal of directors Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia, or either of them, or for the amendment of Section 51 of the By-Laws of the Bank and we know that the petition for the calling of this

meeting was presented for the sole purpose of affording the parties signing the said petition an opportunity at this time to raise the issue, as regards the Bank, of the validity of the law creating the Board of Control, when there is now pending before the Supreme Court of the Philippine Islands an action wherein a similar question will necessarily be determined;

SECOND, Because the petition for the calling of such meeting purporting to be made on behalf of the Government of the Philippine Islands as the holder of more than 80% of the stock of the Bank is signed only by the Governor-General asserting sole representation of said stock, when the charter and the by-laws of said Bank exclusively confer such representation upon the Board of Control of which we are members, and, therefore, such petition, in so far as the stock of the Government of the Philippine Islands is concerned, is absolutely without legal force and effect, and should not have been acted upon by the Board of Directors;

THIRD, Because the alleged resolution of the Board of Directors authorizing the calling of such special meeting received the favorable vote of only four members of said Board out of eight members who were present at the meeting, and Section 55 of the by-laws of the Bank provides that 'a majority of the members in attendance at any Board meeting shall decide its action,' consequently the alleged resolution authorizing the calling of this meeting is a nullity; and

FOURTH, Because the call for the meeting is

issued under no legal authority as required by Section 43 of the by-laws of the Bank, and therefore no meeting should be held thereunder.

You are therefore requested to refrain from holding any meeting of stockholders under the call above mentioned, and you are hereby notified that the undersigned will contest the validity of any action taken of such meeting, should you insist in holding the same in spite of this protest.

Respectfully,

(Sgd.) MANUEL L. QUEZON,
President of the Senate.
Member, Board of Control.

(Sgd.) MANUEL ROXAS,
Speaker, House of Representatives.
Member, Board of Control."

The Chair also announced that he has just received a communication from Paredes, Buencamino & Yulo, Attorneys for Sergio Osmeña, Esperanza Limjap and the Estate of Estefania de Osmeña, and instructed the Secretary to read same before the meeting. Said letter which was read by the Secretary in full is attached hereto and made a part of these minutes.

Mr. Geronimo Santiago raised the question of quorum and asked the President to determine whether there was quorum or not.

Justice Fisher stated that before the meeting proceeds further he would like to be heard regarding the communication of President Quezon and

Speaker Roxas, he (Justice Fisher) being one of the signers of the petition for the calling of a special meeting.

Regarding the first ground of the protest, Justice Fisher said that the removal of directors of a corporation is a question that the stockholders themselves decide; that the Corporation Law does not require that specific statement of the grounds for the removal of directors should be made; that the position of a director of a corporation is similar to that of a party holding a power-of-attorney for another party and such power-of-attorney may be withdrawn by the party giving it at the latter's pleasure; that while it is true that there is pending in the Supreme Court an issue regarding the validity of the Board of Control, that fact is of no importance in this connection. It does not prevent any stockholder from exercising his rights as such.

As to the second ground of the protest, regarding the claim of the Governor-General for exclusive representation of the Government stock in the Bank, Justice Fisher said it raised the direct question of the validity of the Board of Control which is a matter for the courts to decide.

As to the third point, Justice Fisher called attention to certain well known precedents supporting the legality of the resolution of the Board calling for this special meeting. He cited the case of a corporation's board of directors in which four members attended a meeting. In a matter where two of the

members voted favorably and one against and the Chairman announced the resolution carried, the courts held that the resolution was in order as it implied that the President was in favor of the resolution. He therefore believed that the allegation contained in the protest that the resolution calling for a special meeting was a nullity cannot be sustained. Furthermore even if there had been no resolution whatever, Justice Fisher said that the Corporation Law authorized stockholders holding at least one-half (½) of the shares entitled to be voted, to call a special meeting for the purpose of removing directors and no action on the part of the Board of Directors is required in such circumstances.

As to the fourth ground, Justice Fisher said it did not need comment as it is similar to the third.

As to the letter of Paredes, Buencamino & Yulo, Justice Fisher said the grounds of protest are similar to those contained in the communication of President Quezon and Speaker Roxas.

Mr. Geronimo Santiago rose for a point of order stating that before discussing any matter like the protest of President Quezon and Speaker Roxas, the President should first determine whether there is a quorum or not.

Mr. Romarico Agcaoili said that the mere fact that the call for a special meeting was issued by the President showed that he recognizes the right of the Governor-General to vote the stock of the Government and moved that the letter of protest be set

aside. Mayor Miguel Romualdez seconded the motion.

The Chair explained that the meeting has not yet entered into a discussion of business; that he will presently decide the question of whether there is a quorum or not. He said he just wanted the stockholders to have opportunity to express their opinion whether or not there existed a quorum; and so, as a matter of fairness, he let Justice Fisher to give his points of view on the questions raised by the letters above referred to, since these questions, or one of them at least, affect the question of quorum just raised by Mr. Santiago.

Mr. Agcaoili said it was unfair for the President to declare a lack of quorum as if he does not recognize the Governor-General to vote the Government shares of stock he could have said so before this time and saved the stockholders, who are here, the trouble of coming to the meeting. Mr. Agcaoili insisted on his motion that the letter of protest be filed and that the meeting starts the consideration of its business.

Col. Hugh C. Smith seconded the motion of Mr. Agcaoili but said that he did not subscribe to the remarks of Mr. Agcaoili as same are unfair to the President.

The Chairman ruled Mr. Agcaoili out of order; then ruled as follows:

> Section 4 of Act No. 2938, which constitutes the corporate charter of this Bank, pro-

vides that the voting power of all the stock of this Bank owned and controlled by the Government of the Philippine Islands shall be vested exclusively in a board known as the Board of Control, composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives. Section 47 of the By-Laws of the Bank, duly approved by the Board of Directors and by the Board of Control, and acted upon by the stockholders of the Bank for several years, also provides that the voting power of all the stock owned and controlled by the Government of the Philippine Islands is vested exclusively in the Board of Control composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives. It is my understanding that at the present time, there is pending before the Supreme Court of the Philippine Islands a case wherein the validity of a similar provision in a charter of another corporation has been placed in issue; it is not our purpose to anticipate the decision in this case. Until the decision in that case is rendered, or until that particular provision of the Charter and By-Laws is repealed or otherwise amended, it is the duty of this Bank as a corporation to strictly abide by its corporate Charter and its By-Laws. Otherwise, the Bank will incur a breach of that Charter, and furthermore violate the rights of the minority stockholders.

For this reason, I am of the opinion that the stock of the Government of the Philippine Islands can only be counted as duly represented in this meeting, if the Board of Control referred to in its corporate Charter and its By-

Laws appears before this meeting as representing said stock.

Thereupon, the Chairman adjourned the meeting for lack of quorum.

Justice Fisher said that he protested in his behalf and that of the Governor-General to the President's ruling that there is no quorum present. He insisted that there is a quorum because the Board of Directors by majority vote called for this special meeting at the instance of the petitioners. He said that if the Chairman believed there was no quorum that he should vacate the Chair.

The Chairman said that he would not vacate the Chair but would adjourn the meeting and thereupon announced the meeting adjourned for lack of a quorum.

(Sgd.) LEON ANCHETA,
Secretary.

APPROVED:
(Sgd.) R. CORPUS,
Chairman.

On the same date, February 7, 1927, the following stipulation was filed:

(CAPTION AND TITLE OMITTED)

Now come the parties to the above-entitled cause, and, subject to the approval of this Honorable Court, stipulate and agree that the motion of date February 7, 1927, for permission to intervene herein may be granted, and that the pleading en-

titled "Complaint in Intervention" attached to said motion may be filed, and that plaintiff may have twenty-four hours to answer said complaint in intervention.

Manila, February 7, 1927.

(Sgd.) DELFIN JARANILLA,
Attorney-General of the Philippine Islands.
(Sgd.) JOSE A. SANTOS,
Attorneys for Defendants.
(Sgd.) PAREDES, BUENCAMINO & YULO,
Attorneys for Intervenors.

(Sgd.) F. C. FISHER,
(Sgd.) HUGH C. SMITH,
Special Counsel for Plaintiff.

On the same date, February 7, 1927, the plaintiff filed the following answer to the complaint in intervention:

(CAPTION AND TITLE OMITTED)

Now comes the plaintiff herein and answering the complaint in intervention says—

1. Plaintiff denies the averments of said complaint, except as herein expressly admitted.

2. Plaintiff admits the averments of fact of Paragraphs I (except the word "duly" in line 13 thereof), II, III, IV, V, VI, X (except the averment that the Secretary acted only upon the authority

of the Board of Directors), XI (except the words "on account of the absence of a quorum"), XIII, and XIV (except the last eighteen words thereof).

WHEREFORE, plaintiff prays that upon trial the complaint in intervention be dismissed, with costs.

Manila, February 7, 1927.

(Sgd.) DELFIN JARANILLA,
Attorney-General of the Philippine Islands.
(Sgd.) F. C. FISHER,
(Sgd.) HUGH C. SMITH,
Special Counsel for Plaintiff.

RECEIVED COPY February 7, 1927.

(Sgd.) PAREDES, BUENCAMINO & YULO,
Attorneys for Intervenors.
(Sgd.) JOSE A. SANTOS,
Attorneys for Defendants.

On the same date, February 7, 1927, the parties filed the following:

(CAPTION AND TITLE OMITTED)
STIPULATION OF FACTS

Now come the parties to the above-entitled cause, plaintiff, defendants and intervenors, and stipulate and agree as follows:

I

That the Philippine National Bank is a banking corporation duly organized and existing under and

by virtue of the provisions of Act 2612, as amended by Acts 2747 and 2938 of the Philippine Legislature; and that by virtue of Section 41 of said Act 2612, as amended, the provisions of the Corporation Law of the Philippine Islands in so far as they are not contrary to or inconsistent with the valid provisions of said Act 2612, as amended, are made applicable to the said Philippine National Bank;

II

That the intervenors are all of legal age, and that the intervenors Geronimo Santiago, Victor Buencamino and Gregorio Sinjian are residents of the City of Manila, Ladislao Tapia, Eufemia Tapia and Maria Salud Tapia are residents of Tanauan, Batangas, and Dionisio Jakosalem, a resident of Cebu, Cebu, and the duly appointed and qualified administrator of the estate of Pedro Cui, a stockholder of record of the Philippine National Bank.

That the defendants Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia are all of age and residents, the first of Taal, Batangas, and the last two of the City of Manila; that said defendants are and at all times hereinafter mentioned were acting as directors of the Philippine National Bank, having been duly elected as such, prior to December 1st, 1926, in accordance with the provisions of the corporate charter and by-laws of said Bank.

That plaintiff is a stockholder of record of the Philippine National Bank holding 97,332 shares of the capital stock of said Bank.

III

The Board of Directors of the Philippine National Bank consists of nine members.

IV

By Section 3 of Act 2612 it is provided that the authorized capital of the Philippine National Bank shall be ₱20,000,000.00 divided into 200,000 shares of the par value of ₱100.00 each.

V

By Section 4 of Act 2612 it was provided that the Government of the Philippine Islands should purchase with public funds, at par, 101,000 shares of the stock of the Philippine National Bank.

VI

By Section 4 of Act 2612 it was also provided:

> "That the voting power of all stock purchased directly by the Philippine Government as an investment from the general funds of the Government, and the voting power of all stock purchased for the benefit of the insurance fund, of the public works bonds sinking fund, and of the friar lands bonds sinking fund, shall be vested exclusively in the Governor-General."

VII

Pursuant to the authority of Act 2612 the Government of the Philippine Islands purchased and became the registered owner of the majority of the shares of the stock of the Philippine National Bank.

VIII

By Section 1 of Act 2747 the provisions of Section 4 of Act 2612 relating to the voting of the stock owned by the Government of the Philippine Islands in the Philippine National Bank were amended to read as follows, to wit:

> "The voting power of all the stock of the National Bank owned and controlled by the Government of the Philippine Islands shall be vested exclusively in a committee consisting of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives."

That Section 47 of the By-Laws of said Bank provides:

> "SECTION 47. The voting power of all stock owned and controlled by the Government of the Philippine Islands is vested exclusively in the 'Board of Control' composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives."

IX

Thereafter, by Act 2938 of the Philippine Legislature the authorized capital stock of the Philippine National Bank was increased to ₱50,000,000.00, and the Philippine Government was authorized to purchase shares of the stock of the Bank to the aggregate number of 153,000; and the provisions relating to the exercise of the voting power of the stock owned and controlled by the Government of the Phil-

ippine Islands in the Philippine National Bank were further amended to read as follows:

> "The voting power of all the stock of the National Bank owned and controlled by the Government of the Philippine Islands shall be vested exclusively in a board, the short title of which shall be 'Board of Control,' composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives."

X

That on November 9, 1926, the Governor-General of the Philippine Islands issued and published Executive Order No. 37 reading as follows:

> "EXECUTIVE ORDER
> No. 37
>
> Whereas it is held in an opinion of the Judge Advocate General of the United States Army, confirmed by an opinion of the Attorney-General of the United States, received at the Office of the Executive, November seventh, nineteen hundred and twenty-six, that the provisions of the statutes passed by the Philippine Legislature creating a 'Board of Control' or 'Committee' and enumerating the duties and powers thereof, with respect to certain corporations in which the Insular Government is the owner of stock, are nullities; that the remaining portions of said statutes are valid, that the duties imposed by said statutes upon said Board or Committee are executive in their nature, and subject to the provisions of the Organic Act relating to the executive functions; that said executive duties

and powers may be performed as in other cases not specifically provided for by law.

Now, therefore, acting under authority of said opinions, the duties and powers heretofore exercised by said 'Board of Control' or 'Committee' shall, from and after this date, be exercised solely by the Governor-General pursuant to the executive power vested in him by the Organic Act.

(Sgd.) LEONARD WOOD,
Governor-General."

XI

That on the 23rd day of December, 1926, at a meeting of the Board of Directors of the Philippine National Bank, the resignation of A. Gideon as a member of said Board having been previously accepted, a motion was presented to the effect that the Board of Directors convene a special meeting of the stockholders for the purpose of filling the vacancy thus created in said Board and of amending Section 51 of the By-Laws of said Bank; that in presenting said motion the mover stated that the purpose of calling a special meeting of the stockholders was to provide a test case for the courts to pass upon the question of the validity of the law creating the Board of Control; and that in view of the importance of the question it was then decided that the consideration of said motion be postponed until the next meeting of the Board of Directors to be held on Decem-

ber 28, 1926, all of which more fully appears from the minutes of said meeting which read as follows:

"EXCERPT FROM THE MINUTES OF THE MEETING OF THE BOARD OF DIRECTORS OF THE PHILIPPINE NATIONAL BANK HELD ON DECEMBER 23, 1926, AT ITS OFFICES ON THE ESCOLTA

x x x x x x x x x

236. *By-Laws of Bank.* Director Cotterman said that he personally believes Section 51 of the By-Laws regarding filling of vacancies existing in the Board is illegal; that the filling of the vacancy should be done by the stockholders and forthwith presented the following resolution for approval by the Board:

> WHEREAS, a vacancy exists in the Board of Directors of the Philippine National Bank, due to the resignation of A. Gideon; and
>
> WHEREAS, doubt has been expressed by a member of this Board as to the validity of Section 51 of the by-laws of this corporation which purports to authorize the Board, by majority vote, to fill such vacancy for the unexpired term: Now, therefore, be it
>
> RESOLVED by the Board of Directors that a special meeting of the shareholders of the Philippine National Bank be held at its principal place of business, in the Masonic Temple Building, Escolta, Manila, Philippine Islands, at three o'clock, postmeridian, the

17th day of January, 1927, for the purpose of electing a director to fill the existing vacancy, and for the further purpose of considering the advisability of amending the by-laws by striking out Section 51 thereof; and

BE IT FURTHER RESOLVED that notice of the time, place and purposes of the said special meeting be given all shareholders of the Bank in the manner prescribed by Sections 43 and 44 of the by-laws.

Director Cotterman made the following remarks: "I like to make explanations which explain some points raised. There is no chance of our keeping this Bank out of the question regarding the Board of Control. Having been advised of the steps under contemplation which will bring the Bank to the question, this matter of bringing it up comes from me personally in order to give this Board the least possible embarrassment and without forcing us to commit ourselves either one or the other point which is taken up. This is the reason why Mr. Gideon has resigned. By this means it gives us a chance to call a meeting of the stockholders to consider the validity of Section 51 of the By-Laws and without involving this Board either as a whole or as individuals in the question of the validity or invalidity of the Board of Control, because whatever will result from the meeting of January 17th, it will not have any effect on the Board. I move the approval of this resolution without change or modification, because it has been carefully prepared to meet the

situation in the least embarrassing way to all of us. If it is disapproved, we will all be involved in the question a great deal more than under this plan.

"In regard to validity of Section 51, I have a couple of opinions which I would like to go into the records." Forthwith, Director Cotterman handed to the President the opinions in question which were read by the members of the Board. Said opinions are attached hereto and made a part of these minutes.

Director Lavadia asked if we could not postpone action so that the matter may be thoroughly studied. Director Cotterman said that there is a desire to clear up this question with the least possible delay and postponement of the matter will not help.

Director Lavadia made the following statements: "The position of a director is not very inducing. I only thought of the consequence of an action which may precipitate our clients to withdraw their deposits from the Bank. I, therefore, propose that we postpone action until next week. In the meantime, the President and the General Manager consult the Legal Department, preferably the Secretary of Justice, with regard to the action to be taken in connection with the proposed resolution."

Then Director Lavadia mentioned two clients who went to him to ask whether they should transfer their accounts to other banks on account of Executive Order No. 37.

Director Heilbronn said that the National Bank

is a government bank and is the safest of the banks in Manila.

Director Cotterman said that regarding postponement of action, it is possible that under the Corporation Law, the stockholders will then take steps to remove some directors to bring up the case, so that for the sake of getting the question in the easiest way possible, he recommended approval of the proposed resolution. Then Director Cotterman further said: "I want to say there is no animosity. On the other hand, the Governor-General says this is the best Board that has sat in the Bank. I also say that if the President recognizes any one party, the Governor-General will not resent the action of the President."

Director Hind made the following remarks: "In this matter of involving the Bank, there seems to be a disposition to bring the Bank into the question because of all the government corporations, it is the one where the issue is well defined. Supposing the Board, by majority vote, adopts the resolution to postpone, Mr. Cotterman thinks that action will be taken any way regardless of our vote regarding postponement. My feeling in brief is this—that the Bank as such regardless of the personal opinion of the Board should not take any action which stands in the way of immediate clarification of the Board of Control issue. I think it is the part of wisdom to have this matter clarified. In other words, if our delaying this matter would not precipitate ac-

tion, I would postpone it, but if there is a feeling that there is, then we should help to expedite it."

The President announced that votation on the amendment proposed by Director Lavadia to the motion of Director Cotterman is in order. The vote stood as fallows:

Director	Heilbronn	—	Against the amendment
"	Roxas	—	In favor of amendment
"	Valle Cruz	—	—do—
"	Lavadia	—	—do—
"	Agoncillo	—	—do—
"	Hind	—	Against the amendment
"	Cotterman	—	—do—

The President announced that the amendment of Director Lavadia was carried and approved.

x x x x x x x x x x

I hereby certify that the foregoing resolution was adopted by the Board of Directors of the Philippine National Bank on December 23, 1926.

(Sgd.) LEON ANCHETA,
Secretary,
Board of Directors,
Philippine National Bank."

XII

That at the next meeting of the Board of Directors of said Bank held on the 28th day of December, 1926, the motion for the convening of a special meeting of the stockholders for the purpose of

filling the vacancy caused by the resignation of the said A. Gideon and of the amendment of Section 51 of the By-Laws as set forth in paragrph XI hereof, was defeated; all of which more fully appears from the minutes of said meeting, as shown by the following excerpt therefrom, to wit:

"EXCERPT FROM THE MINUTES OF THE MEETING OF THE BOARD OF DIRECTORS OF THE PHILIPPINE NATIONAL BANK HELD ON DECEMBER 28, 1926, AT ITS OFFICES ON THE ESCOLTA

x x x x x x x x x

267. *By-Laws—Special Meeting of Stockholders.* The President announced that the only matter pending before the meeting is the one held over from the last meeting regarding Director Cotterman's proposed resolution for the calling of a special meeting of the stockholders. The President stated that Judge Santos had prepared an opinion on the matter; that the Secretary of Justice had telephoned stating that due to lack of time he cannot render an opinion of the subject in time for this meeting. The President further stated that Justice Fisher was with him this noon and asked him to transmit the following explanation given by him in connection with the proposed resolution of Director Cotterman which follows:

First. He says that the contemplated resolution if approved will not commit the Board to recog-

nize either the Governor-General or the other party.

Second. The vote on the resolution does not imply that the Board is committing itself to declare Section 51 of the By-Laws either legal or illegal. The purpose is only to bring the matter to the stockholders who will decide as to its legality or illegality.

Third. He believes the confidence of the public would not be affected much less the occurrence of a panic because the purpose is only to fill the vacancy existing and to amend certain provisions of the By-Laws. On the other hand, if the resolution is not approved there would be more complications as in order to bring the case to the courts the Governor-General will ask for the calling of a special meeting for the purpose of voting on the removal of several directors.

Fourth. The formula presented, viz., that of calling a special meeting to fill the vacancy created by the resignation of Mr. Gideon and to consider the advisability of amending Section 51 of the By-Laws, is believed the easiest way of bringing the case to the courts with the least embarrassment to all concerned.

The President further stated that he asked Justice Fisher why the matter could not be held until the next annual meeting of the Bank in March. Justice Fisher said that it is a question which he cannot answer as he received the instructions from the Governor-General; that if the Board decides not to

approve the proposed resolution calling for a special meeting, then the Governor-General will proceed to call such a meeting.

The President then said that the above are the arguments given by Justice Fisher justifying the calling of a special meeting, which he asked to be conveyed to the Board before submitting the question to a vote. On the other hand, there is the opinion of the Attorney of the Bank which was read to the Board. Said opinion is attached hereto.

Director Hind stated that as he remarked last week, we should take the step that is less embarrassing considering the relation of the Bank to the public.

Director Cotterman said the following: 'I appreciate very much the opinion of Attorney Santos but I call your attention to the fact that his contention that there is no necessity for a special meeting is based entirely on his own personal judgment. I believe this is a matter for the directors to decide. For my part, I believe the circumstances justify the calling of a special meeting.'

The President then asked the Board to vote on the proposed resolution of Director Cotterman. The Secretary was asked to read the proposed resolution which is as follows:

> WHEREAS, a vacancy exists in the Board of Directors of the Philippine National Bank, due to the resignation of Mr. A. Gideon; and

WHEREAS, doubt has been expressed by a member of this Board as to the validity of Section 51 of the by-laws of this corporation which purports to authorize the Board, by majority vote, to fill such vacancy for the unexpired term: Now, therefore, be it

RESOLVED by the Board of Directors that a special meeting of the shareholders of the Philippine National Bank be held at its principal place of business, in the Masonic Temple Building, Escolta, Manila, Philippine Islands, at three o'clock, postmeridian, the 17th day of January, 1927, for the purpose of electing a director to fill the existing vacancy, and for the further purpose of considering the advisability of amending the by-laws by striking out Section 51 thereof; and

BE IT FURTHER RESOLVED that notice of the time, place and purposes of the said special meeting be given all shareholders of the Bank in the manner prescribed by Sections 43 and 44 of the By-Laws.

The voting stood as follows:

Director Heilbronn—Yes.
" Roxas —No.
" Valle Cruz—I wish to say something before giving my vote. I like to say that I am the first to recognize the independent judgment of the author of this motion but it seems that in voting in favor of the motion, I would act contrary to my conscience because since 1920 until today, while Director of this Bank, we have been filling vacancies on the Board with the sanction of the Board of Control so that it would be inconsistent on my part if

I would vote in favor of the proposition of Mr. Cotterman. Besides, Mr. Cotterman's contention that Section 51 of the By-Laws is not legal is doubtful. I believe that up to now, the By-Laws of the Bank which were prepared by the first Board of Directors and approved by the Board of Control are still in force and valid. I believe that the Charter and the By-Laws of the Bank are still in force until they have been declared null by the courts. I like to say that I have always felt admiration and respect for Mr. Cotterman, and I have nothing against him when I vote against his motion. I am acting freely as a member of the Board. If it is the intention to send this matter to the court, it may produce a panic and I don't like to be responsible for such result. Therefore, I vote 'no'.

Director Lavadia —No.
" Agoncillo —No.
" Hind —Yes.
" Cotterman—Yes.

The President announced that the motion of Director Cotterman was defeated, four voting against and three in favor.

x x x x x x x x x x

I hereby certify that the foregoing resolution of the Board of Directors of the Philippine National Bank was adopted on December 28, 1926.

(Sgd.) LEON ANCHETA,
Secretary,
Board of Directors,
Philippine National Bank."

XIII

That at the same meeting of the Board of Directors held on December 28, 1926, the motion referred to in paragraphs XI and XII hereof having been disapproved, the following proceedings took place, as recorded in the minutes of said meeting, to wit:

"*Special Stockholders' Meeting—Philippine National Bank.*

Director Cotterman stated that as a result of the action of the Board on his motion (See Res. No. 267 of December 28, 1926) it became his painful duty to be a messenger of a petition signed by His Excellency, the Governor-General, in representation of the Government of the Philippine Islands and other five stockholders of the Bank. Thereupon, Director Cotterman handed the petition to the President. Said petition which was read to the Board in English and translated into Spanish, follows:

> 'Pursuant to the provisions of Section 34 of the Corporation Law (Act 1459) demand is hereby respectfully made by the undersigned shareholders, the registered owners of more than eighty (80) per centum of the outstanding shares of the stock of this corporation entitled to be voted, that a special meeting of the shareholders be called, to be held at three o'clock, p. m., of the 17th day of January, 1927, at the office of the corporation, Masonic Temple Building, Escolta, Manila, P. I., for the purpose of voting upon the removal of Messrs. Baldomero Roxas, Catalino Lavadia

and Gregorio Agoncillo from their offices as directors and the election at the same time and place, of other qualified persons to fill the vacancies created, if the said directors or either of them shall be removed from office at said special meeting; and for the purpose of filling the vacancy now existing due to the resignation of Director Gideon; and for the further purpose of considering the advisability of the repeal of Section Fifty-one (51) of the By-Laws.

'You are hereby required to give or cause to be given to each of the shareholders of this corporation notice of the time, place and purposes of the said special meeting, such notice to be given in the manner prescribed by Section 44 of the By-Laws and by Section 29 of the Corporation Law.

'You will please take notice that in the event of your failure or refusal to take the action hereby requested, within forty-eight hours from the delivery of this demand, such special meeting will be called and notice thereof given by one or more of the undersigned shareholders, pursuant to the provisions of Section 34 of the Corporation Law.

Shareholders	*No. of Shares*
The Government of the Philippine Islands	
By (Sgd.) Leonard Wood, Governor-General	97,332
(Sgd.) F. C. Fisher	5
" H. L. Heath	1
" J. L. Headington	1
" J. R. Wilson	1
" John Gordon	1"

Director Cotterman moved that a special meeting of the stockholders be held in accordance with the petition submitted.

Director Lavadia said: 'The By-Laws of the Bank specifically says that to call a special meeting of the stockholders same should be made at the request of stockholders owning one-third of all the stock of the Bank. In the petition submitted, it appears that the Governor-General is included assuming representation of all the shares of stock owned by the Government. I question the legality of the representation assumed by the Governor-General because there is a similar case pending in the court and I think we should not anticipate judicial judgment but to act in accordance therewith when the judgment shall have been rendered. In the meantime, I think we should adhere to the Charter of the Bank. I therefore believe that the petitioners do not have the number of shares of stock necessary to call for a special meeting.'

Director Hind: 'I just want to point out that in case the proper authority refuses to call a meeting, any individual can call the meeting.'

Director Heilbronn: 'There is no use discussing the matter. It should be let to take its own course in the courts. I believe a special meeting should be called according to the petition which is presented in the manner and purposes mentioned in said petition.'

Thereupon, several members of the Board asked

that the question of calling a special meeting of the stockholders in accordance with the petition submitted, be voted upon. The President asked the members to cast their votes which resulted as follows:

Director	Cotterman	—Yes.
"	Hind	—Yes.
"	Agoncillo	—There is a new point. I say, yes, so that my removal is sure and make promptly.
"	Lavadia	—No.
"	Valle Cruz	—No.
"	Roxas	—No.
"	Heilbronn	—Yes.

The President announced that the motion to call a special meeting in accordance with the petition was approved four members voting in favor and three against."

XIV

That at said meeting of the Board of Directors of the Philippine National Bank held on the 28th day of December, 1926, referred to in paragraphs XII and XIII hereof, there were present all of the remaining eight directors of said Bank; that Section 55 of the By-Laws of the Philippine National Bank provides:

> "SECTION 55. A majority of the Board of Directors shall constitute a quorum, and a majority of the members in attendance at any Board meeting shall decide its action. A minority of the Board present at any regula

or special meeting may, in the absence of a quorum, adjourn to a later date, but may not transact any business until a quorum has been secured."

XV

That Section 43 of the By-Laws of said Bank provides:

> "SECTION 43. Special meeting of stockholders may be held at any time at the office of the Bank, upon resolution of the Board of Directors, or at the request of stockholders owning one-third (1/3) of all the stock of the Bank.
>
> "Calls for special meeting shall be issued fifteen (15) days in advance and shall specify the time, place, and object of the meeting, and no business other than that specified in the call shall be transacted at such meeting."

XVI

Thereupon the Secretary of the Bank, acting upon the written instructions of the President, sent printed notices of the time, place and purpose of the said special meeting to each and every shareholder of the said Bank at his last known place of residence, which said notice was sent at the time and in the manner prescribed by Section 44 of the by-laws of the said Bank and Section 29 of the Cor-

poration Law, which said printed notice is in words and figures as follows, to wit:

PHILIPPINE NATIONAL BANK
NOTICE OF SPECIAL MEETING
OF THE SHAREHOLDERS

To the Shareholders of the
Philippine National Bank:

A request having been filed by the Governor-General, purporting to have been made by him on behalf of the Government of the Philippine Islands, as the owner of 97,332 shares of the stock of this corporation, and by five other shareholders holding (9) shares, that a special meeting of the stockholders be held for the following purposes:

(a) To remove Directors Baldomero Roxas, Catalino Lavadia and Gregorio Agoncillo;

(b) To elect directors to fill the vacancies created by such removals, if made;

(c) To elect a director to fill the vacancy created by the resignation of Director A. Gideon; and

(d) To consider the advisability of repealing Section 51 of the By-Laws;

and this request purporting to have been made on behalf of stockholders holding more than two-thirds of the outstanding shares entitled to vote, the Board of Directors, by resolution adopted at a meeting held the 28th day of December, 1926, have resolved to convene a

special meeting of the shareholders of this corporation, for the purposes above mentioned, to be held at the principal office of the Philippine National Bank, Masonic Temple Building, Escolta, Manila, Philippine Islands, at three o'clock p. m., January 17th, 1927, of which meeting notice is hereby given pursuant to the provisions of the Corporation Law and the By-Laws of the Philippine National Bank.

Manila, December 28, 1926.

(Sgd.) LEON ANCHETA,
Secretary."

XVII

In addition to sending printed notices of the call of the said special meeting to each of the shareholders of the Bank, as averred in the paragraph next preceding, the Secretary of the Philippine National Bank caused the said notice as above set forth to be published for one week in two newspapers prior to the time set for the said meeting in two newspapers of general circulation published in the City of Manila—one printed in the English language and one printed in the Spanish language.

XVIII

At the time for which the said special meeting was called, to wit, three o'clock p. m., of the 17th day of January, 1927, there were outstanding 100,000 shares of the capital stock of the Philippine National Bank, of which 97,332 shares were owned by and were registered on the books of the corporation in

the name of the Government of the Philippine Islands (all of which said shares were purchased directly by the Philippine Government, as an investment, from the general funds of the Government), and 2,668 shares were owned by and registered in the name of private persons.

XIX

That on January 17, 1927, at 3 o'clock in the afternoon, pursuant to the notice aforementioned, a number of stockholders of the Philippine National Bank met at its office, Masonic Temple Building, Manila; that the proceedings at this meeting, as recorded in the minutes kept by the Secretary of said Bank, were as follows:

"MINUTES OF THE SPECIAL MEETING OF STOCKHOLDERS OF THE PHILIPPINE NATIONAL BANK HELD ON JANUARY 17, 1927,

AT ITS OFFICES ON THE ESCOLTA, MANILA.

The President called the meeting to order at 3:00 o'clock p. m. and instructed the Secretary to call the roll.

The Secretary reported that there are outstanding 100,000 shares of stock of the Philippine National Bank under Act No. 3174 of the Philippine Legislature. Of these, 97,332 shares are owned by the Government of the Philippine Islands and 2,668 shares, by private stockholders, according to the

Bank's stock ledgers. The following private stockholders were present in person:

Stockholder	*No. of Shares*
Delfin Jaranilla	1
A. G. Escamilla	2
Miguel Romualdez	1
C. M. Cotterman	1
John R. Wilson	1
L. M. Heras	5
Halstead Dorey	1
H. L. Heath	1
A. Gideon	1
Serapion Valle Cruz	1
F. C. Fisher	1
R. R. Ely	1
John Gordon	1
Manuel de Yriarte	1
C. W. Franks	1
Vicente T. Fernandez	1
Hugh C. Smith	1
Rafael Corpus	1
Mateo Herrera	2
Geronimo Santiago	1
J. P. Heilbronn	8
Total	34

The following stockholders were represented by proxy:

Stockholder	*No. of Shares*	*Proxy*
Concepcion Velasco	4	Antonio M. Opisso
Albina Tuason	1	—do—
Emilio Aguinaldo	1	Romarico Agcaoili
Carried forward	6	

Stockholder	*No. of Shares*	*Proxy*
Brought forward	6	
Emilio Aguinaldo	1	A. G. Escamilla
Corporacion de P. P. Benedictinos	31	Miguel Romualdez
Ong Jan Chuan	13	—do—
Victor Buencamino	7	Mauricio Cruz
Salvador Laguda	1	Ceferino J. de Ortega
Catalino Lavadia	1	Jose Yulo
Total	60	

The Secretary further reported that His Excellency, Leonard Wood, Governor-General of the Philippine Islands, was present and claimed in his capacity of Governor-General of the Philippines exclusive representation of the 97,332 shares of stock owned by the Government of the Philippine Islands.

The Chair announced that he has received a communication from the Honorable Manuel L. Quezon, President of the Senate, and the Honorable Manuel Roxas, Speaker of the House of Representatives, and forthwith instructed the Secretary to read same before the meeting.

The Secretary read the letter in full which is as follows:

January 17, 1927

Hon. Rafael Corpus,
President,
Philippine National Bank,
Manila.

Sir:

Having received notice of a special meetting of the stockholders of the Philippine National Bank appearing to have been issued by the Secretary of said Bank upon the authority of a resolution alleged to have been adopted at a meeting of the Board of Directors on December 28, 1926, we hereby strongly protest against the holding of such meeting,

FIRST, Because there exists at present no valid or lawful reason for the removal of directors Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia, or either of them, or for the amendment of Section 51 of the By-Laws of the Bank and we know that the petition for the calling of this meeting was presented for the sole purpose of affording the parties signing the said petition an opportunity at this time to raise the issue, as regards the Bank, of the validity of the law creating the Board of Control, when there is now pending before the Supreme Court of the Philippine Islands an action wherein a similar question will necessarily be determined;

SECOND, Because the petition for the calling of such meeting purporting to be made on behalf of the Government of the Philippine

Islands as the holder of more than 80% of the stock of the Bank is signed only by the Governor-General asserting sole representation of said stock, when the charter and the by-laws of said Bank exclusively confer such representation upon the Board of Control of which we are members, and, therefore, such petition, in so far as the stock of the Government of the Philippine Islands is concerned, is absolutely without legal force and effect, and should not have been acted upon by the Board of Directors;

THIRD, Because the alleged resolution of the Board of Directors authorizing the calling of such special meeting received the favorable vote of only four members of said Board out of eight members who were present at the meeting, and Section 55 of the By-Laws of the Bank provides that 'a majority of the members in attendance at any Board meeting shall decide its action,' consequently the alleged resolution authorizing the calling of this meeting is a nullity; and

FOURTH, Because the call for the meeting is issued under no legal authority as required by Section 43 of the By-Laws of the Bank, and therefore no meeting should be held thereunder.

You are therefore requested to refrain from holding any meeting of stockholders under the call above mentioned, and you are hereby notified that the undersigned will contest the validity of any action taken of such meet-

ing, should you insist in holding the same in spite of this protest.

Respectfully,

(Sgd.) MANUEL L. QUEZON,
President of the Senate.
Member, Board of Control.
(Sgd.) MANUEL ROXAS,
Speaker, House of Representatives,
Member, Board of Control.'

The Chair also announced that he has just received a communication from Paredes, Buencamino & Yulo, Attorneys for Sergio Osmeña, Esperanza Limjap and the Estate of Estefania de Osmeña, and instructed the Secretary to read same before the meeting. Said letter which was read by the Secretary in full is attached hereto and made a part of these minutes.

Mr. Geronimo Santiago raised the question of quorum and asked the President to determine whether there was quorum or not.

Justice Fisher stated that before the meeting proceeds further he would like to be heard regarding the communication of President Quezon and Speaker Roxas, he (Justice Fisher) being one of the signers of the petition for the calling of a special meeting.

Regarding the first ground of the protest, Justice Fisher said that the removal of directors of a corporation is a question that the stockholders themselves decide; that the Corporation Law does not

require that specific statement of the ground for the removal of directors should be made; that the position of a director of a corporation is similar to that of a party holding a power-of-attorney for another party and such power-of-attorney may be withdrawn by the party giving it at the latter's pleasure; that while it is true that there is pending in the Supreme Court an issue regarding the validity of the Board of Control, that fact is of no importance in this connection. It does not prevent any stockholder from exercising his rights as such.

As to the second ground of the protest, regarding the claim of the Governor-General for exclusive representation of the Government stock in the Bank, Justice Fisher said it raised the direct question of the validity of the Board of Control which is a matter for the courts to decide.

As to the third point, Justice Fisher called attention to certain well known precedents supporting the legality of the resolution of the Board calling for this special meeting. He cited the case of a corporation's board of directors in which four members attended a meeting. In a matter where two of the members voted favorably and one against and the Chairman announced the resolution carried, the courts held that the resolution was in order as it implied that the President was in favor of the resolution. He therefore believed that the allegation contained in the protest that the resolution calling for a special meeting was a nullity cannot be sus-

tained. Furthermore even if there had been no resolution whatever, Justice Fisher said that the Corporation Law authorized stockholders holding at least one-half (½) of the shares entitled to be voted, to call a special meeting for the purpose of removing directors and no action on the part of the Board of Directors is required in such circumstances.

As to the fourth ground, Justice Fisher said it did not need comment as it is similar to the third.

As to the letter of Paredes, Buencamino & Yulo, Justice Fisher said the grounds of protest are similar to those contained in the communication of President Quezon and Speaker Roxas.

Mr. Geronimo Santiago rose for a point of order stating that before discussing any matter like the protest of President Quezon and Speaker Roxas, the President should first determine whether there is a quorum or not.

Mr. Romarico Agcaoili said that the mere fact that the call for a special meeting was issued by the President showed that he recognized the right of the Governor-General to vote the stock of the Government and moved that the letter of protest be set aside. Mayor Miguel Romualdez seconded the motion.

The Chair explained that the meeting has not yet entered into a discussion of business; that he will presently decide the question of whether there is a quorum or not. He said he just wanted the stockholders to have opportunity to express their

opinion whether or not there existed a quorum; and so, as a matter of fairness, he let Justice Fisher to give his points of view on the questions raised by the letters above referred to, since these questions, or one of them at least, affect the question of quorum just raised by Mr. Santiago.

Mr. Agcaoili said it was unfair for the President to declare a lack of quorum as if he does not recognize the Governor-General to vote the Government shares of stock he could have said so before this time and saved the stockholders, who are here, the trouble of coming to the meeting. Mr. Agcaoili insisted on his motion that the letter of protest be filed and that the meeting starts the consideration of its business.

Col. Hugh C. Smith seconded the motion of Mr. Agcaoili but said that he did not subscribe to the remarks of Mr. Agcaoili as same are unfair to the President.

The Chairman ruled Mr. Agcaoili out of order; then ruled as follows:

> Section 4 of Act No. 2938,, which constitutes the corporate charter of this Bank, provides that the voting power of all the stock of this Bank owned and controlled by the Government of the Philippine Islands shall be vested exclusively in a board known as the Board of Control, composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives. Section 47 of the By-Laws of the Bank, duly approved by the Board of Directors and by the

Board of Control, and acted upon by the stockholders of the Bank for several years, also provides that the voting power of all the stock owned and controlled by the Government of the Philippine Islands is vested exclusively in the Board of Control composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives. It is my understanding that at the present time, there is pending before the Supreme Court of the Philippine Islands a case wherein the validity of a similar provision in a charter of another corporation has been placed in issue; it is not our purpose to anticipate the decision in this case. Until the decision in that case is rendered, or until that particular provision of the Charter and By-Laws is repealed or otherwise amended, it is the duty of this Bank as a corporation to strictly abide by its corporate Charter and its By-Laws. Otherwise, the Bank will incur a breach of that Charter, and furthermore violate the rights of the minority stockholders.

For this reason, I am of the opinion that the stock of the Government of the Philippine Islands can only be counted as duly represented in this meeting, if the Board of Control referred to in its corporate Charter and its By-Laws appears before this meeting as representing said stock.

Thereupon, the Chairman adjourned the meeting for lack of quorum.

Justice Fisher said that he protested in his behalf and that of the Governor-General to the President's ruling that there is no quorum present. He

insisted that there is a quorum because the Board of Directors by majority vote called for this special meeting at the instance of the petitioners. He said that if the Chairman believed there was no quorum that he should vacate the Chair.

The Chairman said that he would not vacate the Chair but would adjourn the meeting and thereupon announced the meeting adjourned for lack of a quorum.

(Sgd.) LEON ANCHETA,
Secretary.

APPROVED:
(Sgd.) R. CORPUS,
Chairman."

XX

Immediately after the President declared the meeting adjourned he left the room, accompanied by the Secretary, and some other stockholders; but His Excellency, the Governor-General, and twenty other persons, the owners or representatives of owners of shares of stock of the Philippine National Bank, remained in the place in which they had assembled pursuant to the call and immediately organized by the election of a Chairman *pro tempore* and a Secretary *pro tempore*, and proceeded with the transaction of the business for which the meeting had been called. The proceedings at this meeting as record-

ed by the Secretary *pro tempore* thereof were as follows:

"MINUTES OF A SPECIAL MEETING OF THE SHAREHOLDERS OF THE PHILIPPINE NATIONAL BANK HELD JANUARY 17TH, 1927.

Pursuant to the request of the shareholders owning more than eighty per centum of the outstanding shares and a resolution of the Board of Directors of the Philippine National Bank adopted in accordance therewith, a special meeting of the stockholders of that corporation was called to be held at 3:00 o'clock p. m. on January 17th, 1927, at the office of the Bank, Masonic Building, Escolta, Manila, Philippine Islands. At the time and place designated for holding the meeting there were present the Governor-General of the Philippine Islands, representing the Government of the Philippine Islands as the owner of 97,332 shares of the stock of the Philippine National Bank, and more than twenty persons owning shares or representing the owners of shares.

The President of the Board of Directors, the Honorable Rafael Corpus, was present, acting as Chairman of the meeting, and Mr. Leon Ancheta, the Secretary of the Board of Directors, was likewise present, acting as Secretary of the meeting. President Corpus called the meeting to order, stating that pursuant to the requirements of the by-laws

timely notices of this special meeting had been sent to all shareholders of the Bank and had been published in the newspapers. He then directed the Secretary to read the roll call. The Secretary read the roll call, from which it appeared that of the 100,000 shares of stock outstanding 97,416 shares were represented at the meeting, including the 97,332 shares owned and standing in the name of the Government of the Philippine Islands, which said shares were represented by His Excellency Leonard Wood, the Governor-General of the Philippine Islands. After the reading of the roll call the Secretary, upon the instruction of the President, read a letter addressed to the President of the Bank by the Honorable Manuel L. Quezon, President of the Senate, and the Honorable Manuel Roxas, Speaker of the House of Representatives, protesting against the holding of the special meeting upon the ground that the same had been improperly called by the Board of Directors. Upon the reading of this letter and another letter of similar purport written for and on behalf of certain absent shareholders, and after an answer to the same had been given verbally by Mr. F. C. Fisher, one of the shareholders present suggested to the Chair the absence of a quorum. Thereupon President Corpus stated that in his opinion the shares of the Government of the Philippine Islands in the Philippine National Bank can be voted only by the Board of Control established by Section 4 of the Charter of the Bank, embodied in Act 2938 of

the Philippine Legislature; that the Governor-General alone is without authority to vote the shares on behalf of the Government of the Philippine Islands; and that the other members of the Board of Control, namely, the Honorable Manuel L. Quezon and the Honorable Manuel Roxas, being absent from the meeting, the shares of the Philippine Government were not properly represented at the meeting, and that being so there was no quorum. After the President had made this announcement Mr. F. C. Fisher, one of the shareholders by whom the request for this special meeting was signed, addressed the meeting, stating that in his opinion the ruling of the President as to the absence of a quorum was erroneous and that the meeting had been properly called giving reasons for that opinion. He suggested that all stockholders or representatives of stockholders present who were of the same opinion should remain and continue the meeting by the election of a temporary chairman and a temporary secretary, and proceed with the transaction of the business for which it had been called. President Corpus then stated that he must declare the meeting adjourned for the lack of a quorum, and thereupon withdrew, together with several of the shareholders or representatives of shareholders then present.

Thereupon, on motion by Mr. F. C. Fisher, seconded by Colonel Hugh C. Smith, the Honorable Miguel Romualdez was unanimously elected Chairman *pro tempore;* and upon motion of Mr. F. C.

Fisher, seconded by Mr. Antonio Opisso, Mr. C. W. Franks was unanimously elected Secretary *pro tempore* of the meeting.

The Honorable Miguel Romualdez, Chairman *pro tempore*, then called the meeting to order and directed the Secretary *pro tempore* to read the call upon which this meeting was being held and to take a roll call of the shareholders present. The Secretary then read the call, as follows:

"PHILIPPINE NATIONAL BANK

NOTICE OF SPECIAL MEETING
OF THE SHAREHOLDERS

To the Shareholders of the
Philippine National Bank:

A request having been filed by the Governor-General, purporting to have been made by him on behalf of the Government of the Philippine Islands, as the owner of 97,332 shares of the stock of this corporation, and by five other shareholders holding (9) shares, that a special meeting of the stockholders be held for the following purposes:

(a) To remove Directors Baldomero Roxas, Catalino Lavadia and Gregorio Agoncillo;

(b) To elect directors to fill the vacancies created by such removals, if made;

(c) To elect a director to fill the vacancy created by the resignation of Director A. Gideon; and

(d) To consider the advisability of repealing Section 51 of the By-Laws.

and this request purporting to have been made on behalf of stockholders holding more than two-thirds of the outstanding shares entitled to vote, the Board of Directors, by resolution adopted at a meeting held the 28th day of December, 1926, have resolved to convene a special meeting of the shareholders of this corporation, for the purposes above mentioned, to be held at the principal office of the Philippine National Bank, Masonic Temple Building, Escolta, Manila, Philippine Islands, at three o'clock p. m., January 17th, 1927; of which meeting notice is hereby given pursuant to the provisions of the Corporation Law and the By-Laws of the Philippine National Bank.

Manila, December 28, 1926.

(Sgd.) LEON ANCHETA,
Secretary.'

The Secretary *pro tempore* then read the roll, and responses showed that the stockholders present in person and represented by proxies were as follows:

Names of Shareholders	*No. of Shares*	*By Whom Represented*
Government of the Philippine Islands	97,332	His Excellency, Leonard Wood, Governor-General of Philippine Islands
F. C.Fisher	1	In person
Hugh C. Smith	1	In person
C. M. Cotterman	1	In person
Mateo Herrera	2	In person

Delfin Jaranilla	1	In person
Manuel de Yriarte	1	In person
Antonio Escamilla	2	In person
L. M. Heras	5	In person
John Gordon	1	In person
R. R. Ely	1	In person
Halstead Dorey	1	In person
H. L. Heath	1	In person
John R. Wilson	1	In person
A. Gideon	1	In person
J. P. Heilbronn	8	In person
Miguel Romualdez	1	In person
C. W. Franks	1	In person
Concepcion de Velasco	4	Antonio Opisso
Albina Tuason	1	Antonio Opisso
Emilio Aguinaldo	1	Antonio Escamilla
Emilio Aguinaldo	1	Romarico Agcaoili
Benedictine Fathers	31	Miguel Romualdez
Ong Jon Chuan	13	Miguel Romualdez
	97,413	

After the roll call the Secretary *pro tempore* stated that there were present in person or by proxy shareholders owning 97,413 shares out of the one hundred thousand shares of stock outstanding. Thereupon the Chairman *pro tempore* declared that there was a quorum present and that the meeting was ready for the transaction of business.

His Excellency, Leonard Wood, the Governor-General of the Philippine Islands, then offered the following resolution:

> RESOLVED, That the By-Laws of the Philippine National Bank be amended by striking out Section 51 thereof.

The motion of the Governor-General for the adoption of the foregoing resolution was seconded by Mr. C. M. Cotterman, Mr. F. C. Fisher then requested that voting upon the resolution offered by the Governor-General and his second be by written ballot and that the Chair appoint two inspectors of election for the purpose of receiving the ballots of the persons present and counting and reporting upon their votes. Thereupon the Chairman *pro tempore* appointed Messrs. Hugh C. Smith and Antonio Opisso inspectors of election for the purpose of receiving the ballots cast at the meeting, canvassing the same, and reporting the result of such canvass to the Chair.

Thereupon the resolution proposed by the Governor-General and his second was voted upon by the written ballots by all persons present and the ballots having been received and inspected by the canvassers, they reported to the Chair that the result of the balloting was as follows:

In favor of the resolution 97,413 votes were cast; and

Against the resolution no votes were cast.

Thereupon the Chairman *pro tempore* declared that the resolution had been adopted.

Mr. F. C. Fisher then offered the following resolution:

RESOLVED, That Messrs. Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia be removed from office as directors of the corporation.

Mr. Fisher's motion for the adoption of this resolu-

tion was seconded by Colonel Smith. A vote upon the resolution was then taken by written ballot of the stokholders present in person and represented by proxies and these ballots having been received and canvassed by the inspectors Messrs. Smith and Opisso, they reported to the Chairman *pro tempore* that the result of the balloting was as follows:

> In favor of the adoption of the resolution for the removal of the directors 97,411 votes were cast, including the 97,332 votes cast on behalf of the Government of the Philippine Islands by the Governor-General; and
>
> Against the resolution no votes were cast. (Mr. C. M. Cotterman did not vote.)

Thereupon the Chairman *pro tempore* declared that the resolution had been adopted and that Messrs. Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia had been removed from their offices as members of the Board of Directors of this Corporation.

The Chairman *pro tempore* then announced that the next order of business would be the nomination and election of shareholders to fill the four existing vacancies in the Board of Directors of the Philippine National Bank created by the removal by the stockholders at this meeting of Directors Agoncillo, Roxas and Lavadia, and by the resignation of Director A. Gideon.

His Excellency, Leonard Wood, Governor-General of the Philippine Islands, on behalf of the Gov-

ernment of the Philippine Islands, nominated the following-named shareholders as candidates for election to the four existing vacancies in the Board of Directors of the Philippine National Bank:

Mr. Leon M. Heras
Mr. Manuel Yriarte
Mr. John Gordon
Mr. A. Gideon

The nominations were seconded by General Halstead Dorey. On motion of Mr. Cotterman seconded by Mr. Opisso it was thereupon unanimously directed that nominations for directors be closed.

The shareholders present then proceeded to cast their ballots in writing for the candidates for election to the Board of Directors of the Philippine National Bank so placed in nomination, and the said ballots, having been canvassed by the inspectors of election, Messrs. Smith and Opisso, said inspectors reported to the Chair that the result of the balloting was as follows:

For the election of Mr. L. M. Heras 97,408 votes were cast;

For the election of Mr. M. Yriarte 97,409 votes were cast;

For the election of Mr. John Gordon 97,410 votes were cast;

For the election of Mr. A. Gideon 97,410 votes were cast;

these votes including the 97,332 votes pertaining to the shares of the Government of the Philippine Islands in the Philippine National Bank cast by the

Governor-General on behalf of the Philippine Government in favor of each of the candidates above named. Thereupon the Chairman *pro tempore* declared that the persons above named, viz.:

L. M. Heras,
M. Yriarte,
John Gordon, and
A. Gideon

had each received the number of votes reported by the inspectors of election and had been duly elected to membership on the Board of Directors of the Philippine National Bank.

There being no further business to transact the meeting, on motion duly seconded and unanimously carried, was adjourned without day.

(Sgd.) M. ROMUALDEZ,
Chairman *pro tempore.*

(Sgd.) C. W. FRANKS,
Secretary *pro tempore.*"

XXI

That four of the stockholders present at the meeting as listed in paragraph XX hereof, F. C. Fisher, John Gordon, H. L. Heath and John R. Wilson are among those five private stockholders who, with the Governor-General, signed the petition for the calling of the special meeting;

C. M. Cotterman and J. P. Heilbronn are two of the directors of the Philippine National Bank who voted in favor of the motion to call a special meet-

ing of stockholders of said Bank pursuant to the said petition;

F. C. Fisher, Hugh C. Smith and Delfin Jaranilla are counsel and attorney, respectively, for the plaintiff herein;

R. R. Ely, Halstead Dorey and C. W. Franks are all members of the staff of the Governor-General;

Hugh C. Smith, Delfin Jaranilla, Antonio Escamilla, L. M. Heras, R. R. Ely and Halstead Dorey became stockholders of record long after the said purported call for the special meeting had been issued and shortly prior to the date set for said meeting;

Hugh C. Smith, Delfin Jaranilla, R. R. Ely and Halstead Dorey, each the holder of one share of stock, are the transferees of all but one of the five shares of stock formerly held by F. C. Fisher, counsel for plaintiff herein and one of the stockholders who signed the petition for the calling of the meeting;

Emilio Aguinaldo was represented at said meeting by two proxies, namely, Antonio Escamilla and Romarico Agcaoili;

And A. Gideon is the person who resigned as director of said Philippine National Bank on December 22, 1926, who was voted for by the Governor-General as appears in paragraph XX hereof, and who thereafter presented himself at the meeting of the Board of Directors of said Philippine National Bank on the 21st day of January, 1927, and then and

there made demand that he be permitted to participate in said meeting as a member of said Board of Directors;

XXII

Thereafter, the said L. M. Heras resigned the office of director to which he had been declared elected, as stated in paragraph XX hereof.

XXIII

That the Governor-General, in exercising his asserted right to vote the stock of the Philippine National Bank owned by the Philippine Government for the removal of the defendants herein named, did so upon the assumption that by the terms of the applicable provisions of the Corporation Law the right of the owners, or representatives of owners, of the requisite proportion of the outstanding shares of a corporation to remove directors is absolute and can be exercised without a statement of reasons therefor, and without regard to the merits or demerits of the directors to be removed; that no charges of improper conduct or disqualification to hold the office of director have been made against either of the defendants.

XXIV

Thereafter, to wit, the 21st day of January, 1927, a regular meeting of the Board of Directors of the Philippine National Bank was held at the offices of the corporation in the City of Manila, at which meeting the defendants Gregorio Agoncillo,

Baldomero Roxas and Catalino Lavadia were present, as were also the five uncontested members of the said board.

XXV

After the said meeting of the Board of Directors was called to order Messrs. Manuel Yriarte, John Gordon and A. Gideon presented themselves at the place of meeting, and submitted to the President of the Bank their certificates of election issued to them by the Secretary *pro tempore* at the meeting of the shareholders held January 17th, 1927, as averred, and then and there severally made demand that they be permitted to participate in the said meeting as members elect of the Board of Directors of the Philippine National Bank, and that the defendants Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia, and each of them withdraw from the said meeting, and thereafter cease to exercise or to attempt to exercise any of the duties and powers inherent in the office of directors of the Philippine National Bank.

XXVI

Upon the demand so made by the said Manuel Yriarte, John Gordon and A. Gideon, the President of the Bank presiding at said directors' meeting stated that he declined to recognize their right to membership in said board, and the defendants Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia and each of them did then and there refuse

to surrender the offices of directors of the Philippine National Bank or to recognize the right thereto of the said Manuel Yriarte, John Gordon and A. Gideon; and the said defendants Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia thereafter continued to participate in the transaction of the business of said meeting, and to exercise the functions of directors of the Philippine National Bank.

XXVII

That the defendants, namely, Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia, and each of them, have since the 17th day of January, 1927, continued to exercise and do still exercise the offices of directors of the Philippine National Bank, and claim to be entitled to do so; and that Manuel Yriarte, John Gordon and A. Giedon, and each of them, claim to be entitled to said offices held adversely to them by said defendants.

XXVIII

That the Hon. Manuel L. Quezon and the Hon. Manuel Roxas are members of the Philippine Legislature and are respectively the President of the Senate and the Speaker of the House of Representatives thereof; that the Hon. Manuel L. Quezon has been the President of the Senate continuously since October, 1916, having been re-elected to that position at the beginning of each legislative session thereafter; that the Hon. Manuel Roxas was elected a Representative in the year 1922 and Speaker of

the House of Representatives in October, 1922, and has held such offices of Representative and Speaker of the House of Representatives continuously since said date, having been re-elected to that position at the beginning of each legislative session thereafter.

XXIX

That on January 17, 1927, Emilio Aguinaldo was the registered owner of two shares of the stock of the Philippine National Bank.

That on January 17, 1927, the office of Vice-President of the Philippine National Bank was held by Serapion Valle Cruz.

XXX

That Exhibit B attached to plaintiff's complaint is a correct copy of the by-laws of the Philippine National Bank, and is hereby made a part of this stipulation.

XXXI

That nothing in this stipulation contained shall be construed as an admission on the part of plaintiff that the proceedings recorded in the minutes identified as Exhibit C attached to plaintiff's complaint were not a continuation of the proceedings of the meeting recorded in the minutes identified as Exhibit A attached to plaintiff's complaint; or as an admission on the part of defendants and intervenors that the said meeting was not adjourned in law and in fact when so declared by the President of the Philippine National Bank; or as an

admission by either party of any conclusion of law directly or by inference contained in the pleadings of the other, or others.

Upon this stipulation of facts the case is hereby submitted to the Court for decision upon the arguments oral and written or printed, hereafter to be adduced by the parties.

Manila, P. I., February 7th, 1927.

(Sgd.) DELFIN JARANILLA,
Attorney-General of the Philippine Islands.

(Sgd.) PAREDES, BUENCAMINO & YULO,
Attorneys for Intervenors.

(Sgd.) JOSE A. SANTOS,
Attorneys for Defendants.

(Sgd.) F. C. FISHER,
(Sgd.) HUGH C. SMITH,
Special Counsel for Plaintiff.

On the same date, February 7, 1927, the parties filed the following:

(CAPTION AND TITLE OMITTED)
STIPULATION

It is hereby stipulated and agreed, subject to the approval of the Court, that the plaintiff and the intervenors shall serve and file their printed briefs within ten (10) days from this date; that the defendants shall serve and file their printed brief with-

in ten (10) days from the date of service upon them of plaintiff's brief; that inasmuch as the issues of law presented by this case are in many respects identical with those raised in the case of the Government of the Philippine Islands versus Milton E. Springer, et als., (G. R. No. 26979) now pending in this Court the arguments adduced and authorities cited in the briefs therein submitted or to be submitted may, to avoid unnecessary repetition, be incorporated by reference into the briefs to be submitted herein; and that the case shall be set down for oral argument at the earliest date convenient to the Court after the briefs of the parties have been filed, as herein provided.

Manila, P. I., February 7th, 1927.

(Sgd.) DELFIN JARANILLA,
Attorney-General of the Philippine Islands.

(Sgd.) PAREDES, BUENCAMINO & YULO,
Attorneys for Intervenors.

(Sgd.) JOSE A. SANTOS,
Attorneys for Defendants.

On the 11th day of February, 1927, the Court issued the following order:

> "It is ordered, with the conformity of the parties, that the case of The Government of the Philippine Islands vs. Gregorio Agoncillo, et al., G. R. No. 27225, be set for hearing

on Monday, February 28, 1927, at 9:00 o'clock a. m."

On the 15th day of February, 1927, the plaintiff filed its printed brief.

On the 17th day of February, 1927, the intervenors filed their printed brief.

On the 26th day of February, 1927, the plaintiff filed its printed reply to the brief of the intervenors.

On the 3rd day of March, 1927, the defendants filed their printed brief.

On the 10th day of March, 1927, the intervenors filed their printed memorandum.

On the 1st day of April, the Court rendered the following:

THE GOVERNMENT OF THE PHILIPPINE ISLANDS *v.* GREGORIO AGONCILLO, *et al.*, No. 27225

1. CONSTITUTIONAL LAW; GOVERNMENT OF THE PHILIPPINE ISLANDS; PHILIPPINE NATIONAL BANK; STATUTORY CONSTRUCTION: The doctrines announced in the companion case of the The Government of the Philippine Islands *v.* Milton E. Springer, *et al.*, No. 26979 followed and approved. What differences there are between the two cases on the principal question incline to strengthen rather than weaken the case at bar. In the case at bar, there is not alone a provision providing for a "Board of Control," but other provisions directing and authorizing the "Board of Control" to perform many other functions. In the case at bar, also the doctrine relating to

partial invalidity is fortified by the rule that where amendments to a statute are unconstitutional, the original statute as it existed before the attempted amendment remains in force.

2. ID.; ID.; ID.: The amendments to Section 4 of Act 2612, made by Section 1 of Act 2747 and Section 1 of Act 2938, providing for a Board of Control for the Philippine National Bank, found invalid, and the defendants ousted from the offices of directors of the Philippine National Bank, and the directors selected by the Governor-General placed in possession of those offices.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS,
Plaintiff,
vs.
GREGORIO AGONCILLO, BALDOMERO ROXAS, *and* CATALINO LAVADIA,
Defendants,
GERONIMO SANTIAGO, VICTOR BUENCAMINO, GREGORIO SINJIAN, EUFEMIA TAPIA, MARIA SALUD TAPIA, LADISLAO TAPIA, and DIONISIO JAKOSALEM, as Administrator of the Estate of Pedro Cui,
Intervenors.

No. 27225
Submitted:
Promulgated:
April 1, 1927.
Present:
Avanceña, C. J.
Johnson,
Street,
Malcolm,
Villamor,
Ostrand,
Johns,
Romualdez, and
Villa-Real, JJ.

DECISION

MALCOLM, J.:—

These are *quo warranto* proceedings instituted by the Government of the Philippine Islands against

the defendants, to oust them from their offices of directors of the Philippine National Bank, to which they were named by the legislative members of the Board of Control created by Acts 2747 and 2938. The fundamental legal issue is the validity of the amendments to Section 4 of Act 2612, made by Section 1 of Act 2747 and Section 1 of Act 2938, which provide that "The voting power of all the stock of the National Bank owned and controlled by the Government of the Philippine Islands shall be vested exclusively in a board, the short title of which shall be 'Board of Control,' composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives."

The facts are stipulated. The Philippine National Bank is a corporation created by Acts of the Philippine Legislature. (Act 2612, as amended by Acts 2747 and 2938.) The authorized capital of the bank was originally placed at ₱20,000,000.00, was later increased to ₱50,000,000.00, and was finally reduced to ₱10,000,000.00. (Act 2612, Sec. 3; Act 2938, Sec. 1; Act 3174, Sec. 1.) The Government was first authorized to purchase a majority of the shares of the bank at par. (Act 2612, Sec. 4.) Subsequently, the Government was further authorized to buy not less than 153,000 of the shares and to buy the shares held privately. (Act 2938, Sec. 1; Act 3174, Sec. 1.) Of the present outstanding capital stock of the bank consisting of 100,000 shares of a par value of ₱100.00 each, 97,332 shares are held

by the Government and the remaining 2,668 shares are held by private persons.

The original bank charter provided that the voting power of all the stock of the bank purchased by the Philippine Government "shall be vested exclusively in the Governor-General." (Act 2612, Sec. 5.) Thereafter it was provided that the voting of the Government stock in the Philippine National Bank shall be "vested exclusively in a committee consisting of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives." (Act 2747, Sec. 1.) Finally, the provisions relating to the voting power of the Government stock were amended to read as quoted in the opening paragraph of this decision. (Act 2938, Sec. 1.)

The affairs of the Philippine National Bank are managed by a board of nine directors. Prior to December 23, 1926, A. Gideon, one of the directors of the Philippine National Bank, resigned his office. At the meeting of the board convened on the date mentioned, Director Cotterman offered a resolution providing that a special meeting be held to fill the vacancy so created, and to consider the advisability of repealing Section 51 of the by-laws of the bank, by which it had been provided that vacancies in the board should be filled by the vote of the remaining members, pending action by the stockholders at the annual election. Action on this motion was postponed until the next meeting of the board. This meeting took place on December 28, 1926. Mr. Cot-

terman's resolution was then again discussed but was defeated. Immediately Director Cotterman presented a petition signed by the Governor-General on behalf of the Philippine Government and of five other shareholders of the Philippine National Bank, in which a demand was made that a special meeting of the stockholders of the bank be called for the purpose of considering the advisability of removing Directors Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia, the repeal of Section 51 of the by-laws of the bank, the filling of the vacancy caused by the resignation of Director Gideon, and the election of other directors to fill the vacancies created by the removal of the directors named, should that action be taken by the stockholders. It was requested that the special meeting in question be held at three o'clock p. m., on the 17th day of January, 1927, at the office of the corporation. After submitting the petition, Director Cotterman moved that the special meeting of the stockholders be held in accordance with the petition. On the motion being put to vote, of the eight members of the board present, four voted "yes," three voted "no," and the President of the board remained silent. The chairman thereupon announced that the motion to call a special meeting as requested by the petition was approved. The secretary of the bank sent printed notices of the time, place, and purposes of the proposed special meeting to every shareholder of record of the Philippine Na-

tional Bank. Notice of call was given by publication in two newspapers of general circulation.

The special meeting was attended by twenty-six private persons owning and representing the owners of ninety-four of the privately-owned shares of the bank, and by the Governor-General asserting the right to attend the meeting in the name and on behalf of the Philippine Government, and to vote the 97,332 shares of the stock owned by the Government. The President of the Senate and the Speaker of the House of Representatives failed to attend the meeting, and contented themselves with writing a letter of protest against the meeting on the ground that the Governor-General alone has no right to represent the Philippine Government in relation to the exercise of the voting power of its stock in the bank. The President of the bank, acting as chairman of the meeting, ruled that he could not recognize the right of the Governor-General to vote the Government stock without the concurrence of the President of the Senate and the Speaker of the House of Representatives, and that, therefore, a *quorum* was not present. Upon this he declared the meeting adjourned. The Governor-General protested against the ruling and insisted that *a quorum* was present. The President of the bank and several of the private shareholders then left the room.

After all this had happened, the Governor-General and the other stockholders, twenty in number, remained and organized by the election of a chair-

man *pro tempore* and a secretary *pro tempore*. They then proceeded with the business for which the meeting had been called. It was determined by unanimous vote (a) To remove Directors Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia; (b) To amend the by-laws of the Bank by striking out Section 51 thereof; and (c) To elect Messrs. Manuel Yriarte, John Gordon, A. Gideon, and Leon M. Heras to fill the vacancies created by the resignation of Director Gideon and the removal of the other three directors above mentioned. Mr. Heras subsequently declined the position.

On January 21, 1927, a regular meeting of the board of directors of the Philippine National Bank was held at its office. Messrs. Gregorio Agoncillo, Baldomero Roxas, and Catalino Lavadia as well as the other five directors of the bank whose seats were not contested were present. After the meeting was called to order, Messrs. Manuel Yriarte, John Gordon, and A. Gideon presented themselves, produced their certificates of election, and made demand that they be permitted to participate in the meeting as members-elect of the board of directors of the Philippine National Bank, and that Messrs. Gregorio Agoncillo, Baldomero Roxas, and Catalino Lavadia withdraw from the meeting and cease to exercise any of the duties and powers inherent in the offices of directors of the bank. The presiding officer, who was the President of the bank, refused to recognize the right of Messrs. Yriarte, Gordon and Gideon to

membership in the board, and Messrs. Agoncillo, Roxas, and Lavadia refused to vacate the offices held by them, in favor of Messrs. Yriarte, Gordon, and Gideon. Messrs. Agoncillo, Roxas, and Lavadia have since January 17, 1927, exercised the functions of directors of the Philippine National Bank and claim to be entitled to do so.

There grew out of the facts which have been outlined the action of *quo warranto* brought by the Government of the Philippine Islands. The defendants answered admitting certain facts and denying others. The intervention of the holders of 713 shares of stock having a par value of P71,300.00 was permitted by stipulation duly approved by this Court. The intervenors have made common cause with the defendants.

The main issue has been sufficiently discussed in the previous case of the Government of the Philippine Islands v. Milton E. Springer, et al., No. 26979. What was said in that decision may be taken as incorporated herein. What differences there are between the two cases on the principal question incline to strengthen rather than weaken the instant case.

In the National Coal Company case, there was merely a provision for the voting of the stock of the Government in the company by a committee composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives. In the Philippine National Bank case which is before us, there is not alone a provision provid-

ing for a "Board of Control," but other provisions directing and authorizing the "Board of Control" to perform many other functions. It is provided in the amended charter of the bank (Act 2938) that: (a) Foreign agencies of the bank may not be incorporated without the consent of the Board of the Control (Sec. 10); (b) The bank may not rediscount commercial paper in cases of emergency without the approval of the Board of Control (Sec. 14); (c) The board of directors may not appoint a general manager of the bank or remove him, and may not fix the salary of the general manager of the bank or the assistant general manager without the approval of the Board of Control (Sec. 18); (d) The manager of the bank is required to give the Board of Control any information in his possession regarding the operations of the bank (Sec. 20); (e) A representative of the Insular Auditor who shall act as chief of the auditing department of the bank and other employees of the department cannot be appointed without the approval of the Board of Control (Sec. 22); (f) The payment of compensation to the President or Vice-President of the bank for the performance of the duties of other officers may not be made without the approval of the Board of Control (Sec. 23); (g) The Secretary of Finance cannot suspend the requirement of maintaining the proportion of the reserve funds without the approval of the Board of Control (Sec. 44); (h) The bank may not guarantee payment of certain bonds and may

not buy bonds of other incorporated companies without the approval of the Board of Control (Sec. 45).

The application of the doctrine relating to partial invalidity is also here fortified by the rule that where amendments to a statute are unconstitutional, the original statute as it existed before the attempted amendment remains in force. (Eberle v. Michigan (1914) 232 U. S. 700; People v. Mensching (1907) 187 N. Y. S. 8, 10 L. R. A. 625.) In this connection, it should be recalled that the original statute vested the voting power of the stock owned by the Government in the bank exclusively in the Governor-General, which was legal, while the amendments found invalid, without express repeal, attempted to transfer this power to an illegally constituted Board of Control.

With the main issue disposed of, the remaining points invite but brief comment. While this is obviously a test case, it is not a moot case as contended by intervenors. It arises from a real and important controversy. The special meeting was properly called at the request of the stockholders owning more than one-third of all the stock of the bank in accordance with Section 43 of the by-laws of the bank. Section 34 of the Corporation Law provides that directors of a corporation "may be removed from office by a vote of two-thirds of the members entitled to vote," without specifying whether a motion must be for cause or may be without cause. But here as the defendants are unlawfully holding office, the mat-

ter really has little importance. Moreover, even under the system of cumulative voting, the intervenors could not have elected one director.

Being guided by the decision in the companion case of the Government of the Philippine Islands v. Milton E. Springer, et al., it results that the defendants shall be ousted and altogether excluded from the offices of directors of the Philippine National Bank which they are unlawfully holding, and that the three directors selected by the Governor-General shall be placed in possession of those offices. It is so ordered, without costs.

(Sgd.) GEO. A. MALCOLM.

WE CONCUR:

(Sgd.) THOS. A. STREET.
(Sgd.) JAMES A. OSTRAND.
(Sgd.) CHARLES A. JOHNS.
(Sgd.) NORBERTO ROMUALDEZ.

Johnson, J., concur in separate opinion.

Avanceña, C. J., and Villamor and Villareal, JJ., dissent in separate opinion.

G. R. No. 27225

GOVERNMENT OF THE PHILIPPINE ISLANDS (ex rel. Manuel Yriarte, John Gordon and A. Gideon), petitioner, vs. GREGORIO AGONCILLO, et al., respondents.

QUO WARRANTO—RIGHT OF RESPONDENTS TO ACT AS MEMBERS OF THE BOARD OF DIRECTORS OF THE PHILIPPINE NATIONAL BANK. Upon the facts of record and the law applicable thereto, it is held,

that Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia are unlawfully and illegally holding and exercising the position of members of the Board of Directors of the Philippine National Bank, and should be ousted and altogether excluded therefrom; that Manuel Yriarte, John Gordon and A. Gideon have been duly and legally elected as members of the Board of Directors of the Philippine National Bank, and judgment is rendered that they be inducted into said position, to take charge thereof and to perform the duties incumbent upon them as members of said Board.

The facts in this case in re the powers of the Legislature and its right to participate in the execution of the laws in relation with the powers of the executive and judicial departments of the Government, are exactly analogous to the facts in the case of the Government of the Philippine Islands (ex rel. Romarico Agcaoili, H. L. Heath and Salvador Lagdameo) vs. Milton E. Springer, et al. The principles therein announced are therefore not stated in the syllabus of this case.

IN BANC

Justices Present:
Avanceña, C. J.
Johnson, Street
Malcolm, Villamor
Ostrand, Johns
Romualdez and
Villa-Real JJ.

GOVERNMENT OF THE PHILIPPINE ISLANDS Ex rel. Manuel Yriarte, John Gordon and A. Gideon),
Plaintiff and Petitioner

vs.

GREGORIO AGONCILLO, BALDOMERO ROXAS *and* CATALINO LAVADIA,
Defendants and Respondents

GERONIMO SANTIAGO, VICTOR BUENCAMINO, GREGORIO SINJIAN, EUFEMIA TAPIA, MARIA SALUD TAPIA, LADISLAO TAPIA, *and* DIONISIO JAKOSALEM, as Administrator of the Estate of Pedro Cui,
Intervenors.

G. R. No. 27225
Submitted ....day of....., 1927.
Promulgated 1st day of Apr., 1927.

DECISION

JOHNSON, J., concurring:

Under the admitted facts the writ of *quo warranto* prayed for should be granted. Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia are unlawfully and illegally holding and exercising the positions of members of the Board of Directors of the Philippine National Bank and should be ousted and altogether excluded therefrom; that Manuel Yriarte, John Gordon and A. Gideon have been duly and legally elected as members of the Board of Directors of the Philippine National Bank, and judg-

ment is rendered that they be inducted into said position, to take charge thereof and to perform the duties incumbent upon them as members of said Board of Directors.

The principal questions involved in this action are:

(a) May the Legislative Department of the Government of the Philippine Islands adopt a law and provide that some of its members shall take part in its execution;

(b) Was the Governor-General of the Philippine Islands authorized, under the law, to promulgate General Order No. 37;

(c) Were the respondents legally elected as members of the Board of Directors of the Philippine National Bank; and

(d) What was the effect of the absence of the President of the Senate and the Speaker of the House of Representatives at the time of the election of Manuel Yriarte, John Gordon and A. Gideon and their failure to participate in the election of members of the Board of Directors of the Philippine National Bank.

The questions presented by the petition, answers and stipulated facts involve the respective powers of two great departments of the Government in matters of the enactment and execution of laws. The Supreme Court is called upon to act as an umpire. The questions presented should be seriously

considered by this Court and not to be lightly resolved on.

The said questions were presented to the Supreme Court for solution in an original action, praying for the issuance of the extraordinary legal writ of quo warranto. In relation with the questions involved the specific and definite purpose of the action is (a) to inquire into the right of the respondents Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia to act as members of the Board of Directors of the Philippine National Bank, a private banking corporation created by special charter by an Act of the Philippine Legislature; and (b) to have inducted into office, in their place and stead, said Manuel Yriarte, John Gordon and A. Gideon.

To the petition presented by the Government of the Philippine Islands (ex rel. Manuel Yriarte, John Gordon and A. Gideon) the respondents demurred. Later the said intervenors were admitted as parties, and presented their answer. By a stipulation of facts a question of law only is presented for solution.

THE FACTS UPON WHICH THE ACTION IS BASED

The facts are not in dispute. They have been stipulated. They are few, clear and well defined. For the purposes of this decision they may be briefly stated. They are: That on the 4th day of February, 1916, the Philippine Legislature adopted Act No. 2612, entitled "An Act Creating the Philippine Na-

tional Bank." Said Act provided that the Philippine National Bank shall be a body corporate and shall have the powers enumerated in Section 2 thereof. It further provided that the capital of the Philippine National Bank shall be ₱20,000,000.00, Philippine currency, divided into 200,000 shares of the value, at par, of ₱100.00, Philippine currency. Section 4 of said Act provided that the Government of the Philippine Islands not later than January 31, 1917, shall purchase 101,000 shares at par of the said National Bank and that 99,000 shares of said capital stock shall be offered to the public at par, in accordance with the provisions of said Act. Section 5 of said Act provided the funds for the purchase of the stock by the Government of the Philippine Islands. Section 5 also provided that the voting power of all stock purchased directly by the Philippine Government, as an investment from the general funds of the Government, and the voting power of all stock purchased, shall be vested exclusively in the Governor-General.

On the 20th day of February, 1919, the Legislature adopted Act 2747 entitled "An Act to amend in certain particulars Act Numbered 2612 entitled 'An Act Creating the Philippine National Bank'." That portion of Section 5 of Act 2612, relating to the voting power of the Governor-General, was amended so as to read as follows: "The voting power of all the stock of the National Bank owned and controlled by the Government of the Philippine Islands shall be vested exclusively in a committee con-

sisting of the Governor-General, the President of the Senate and the Speaker of the House of Representatives." It will be noted that the voting power, in said amendment (Section 4, Act 2747), of the stock controlled by the Government, is vested exclusively in a committee consisting of the Governor-General, the President of the Senate and the Speaker of the House of Representatives.

On the 30th day of January, 1921, the Legislature adopted Act 2938, entitled "An Act to amend Act Numbered 2612, entitled 'An Act Creating the Philippine National Bank,' as amended by Act Numbered 2747." By said Act 2938 that part of Section 4 of Act 2747 was amended so as to read as follows: "The voting power of all the stock of the National Bank owned and controlled by the Government of the Philippine Islands, shall be vested exclusively *in a Board*, the short title of which shall be 'Board of Control,' composed of the Governor-General, the President of the Senate and the Speaker of the House of Representatives." It will be noted that the phrase "in a committee" of Section 4 of Act 2747 was changed to the phrase "in a Board," which shall be a "Board of Control," composed of the Governor-General, the President of the Senate and the Speaker of the House of Representatives.

By Section 3 of Act 2938 the National Bank was authorized to increase its capital stock from ₱20,000,000.00, Philippine currency to ₱50,000,000.00, Philippine currency, and for that

purpose was authorized to make a new issue of 300,000 shares of stock. Section 4 of said Act (2938) provided that the Government of the Philippine Islands not later than June 30, 1921, shall purchase all remaining shares of the first issue (twenty million) and part of those of the second issue (fifty million) to the aggregate number of not less than 133,000, and appropriation was made in said Act for the purchase of the additional shares of stock.

Said Acts 2612, 2747 and 2938 were further amended by Acts Nos. 3033 and 3174. Said last two amendments, however, in no way attempted to alter or change the method of voting the stock held by the Government. It may be noted, however, that by Act 3174 the capital stock of the Philippine National Bank was reduced to 100,000 shares at the par value of ₱100.00, which number should include the shares held by the public. It was further provided in said last Act that the Bank may purchase the shares held privately at the price at which they were quoted on the date of the registration of the sale in the books of the Bank, provided that price did not exceed their value at par and that thereafter no stock of said Bank should be sold to the public.

Returning now to said Act 2612, creating the Philippine National Bank, we find in subparagraph (f) of Section 2 a provision which authorizes the said Bank to exercise the general powers mentioned in the Corporation Law (Act 1459) in so far as they

are not inconsistent or incompatible with the provisions of that Act. Subparagraph (f) is also carried forward and made a part of Section 1 of Act 2747. The provisions of said subparagraph (f) are also included as a subparagraph of Section 1 of Act 2938.

The charter of the Philippine National Bank (Section 20, Act 2612; Sec. 17, Act 2747; Sec. 16, Act 2938) provided that "the affairs and business of the National Bank shall be managed by a Board of Directors of seven members, except that, by virtue of Section 16 of Act 2938 the affairs and business of the National Bank shall be directed and its property managed and preserved by a Board of Directors consisting of nine members duly elected as provided in said Act, who shall be paid a per diem of ₱30.00 for each session of the Board of Directors attended by them." Section 17 of Act 2938 provides that "within the first twenty days after the approval of this Act, and annually on the first Tuesday after the first Monday in March, beginning with the year 1922, the stockholders shall meet to elect the members of the Board of Directors for the current year, each stockholder or proxy to be entitled to as many votes as he may have shares of stock, registered in his name on the 31st of January last preceding and held by him at the time of the election."

The business of the Philippine National Bank continued to be managed by its Board of Directors until late in 1926, when a question was raised concerning the right of the President of the Senate and

the Speaker of the House of Representatives to act with the Governor-General in voting the stock of said Bank. That question was referred to the Judge Advocate General of the United States Army as well as to the Attorney-General of the United States. Upon full consideration of the question, the Judge Advocate General and the Attorney-General each reached the conclusion that the President of the Senate and the Speaker of the House of Representatives were without authority in law to take part in the voting of the stock owned by the Government, for the reason that the particular provisions of the charter granting or creating said power was illegal and void, and that the participation of the President of the Senate and the Speaker of the House of Representatives in voting said stock was an illegal encroachment upon the powers of the Executive Department of the Government. Upon receiving said opinion, the Governor-General, evidently for the purpose of avoiding public criticism that he was permitting an illegal and void law to be enforced and, if possible, impeachment proceedings for a failure or refusal on his part to comply with the law of the land, issued an executive order, known as Executive Order No. 37. Said Executive Order No. 37 provides:

"Whereas it is held in an opinion of the Judge Advocate General of the United States Army, confirmed by an opinion of the Attorney-General of the United States, received at the Office of the Executive, November seventh, nineteen hundred and

twenty-six, that the provisions of the statutes passed by the Philippine Legislature creating a 'Board of Control' or 'Committee' and enumerating the duties and powers thereof, with respect to certain corporations in which the Insular Government is the owner of stock, are nullities; that the remaining portions of said statutes are valid; that the duties imposed by said statutes upon said Board or Committee are executive in their nature, and subject to the provisions of the Organic Act relating to the executive functions; that said executive duties and powers may be performed; as in other cases not specifically provided for by law.

"Now, therefore, acting under authority of said opinions, the duties and powers heretofore exercised by said 'Board of Control' or 'Committee' shall, from and after this date, be exercised solely by the Governor-General pursuant to the executive power vested in him by the Organic Act."

Notice of said executive order was duly and timely given by the Governor-General to the President of the Senate and the Speaker of the House of Representatives. The Governor-General further notified the President and Speaker that "he would thereafter exercise exclusively the duties and powers" with reference to the voting of the stock held by the Government of the Philippine Islands in the Philippine National Bank.

At the time of the issuance of said Executive Order No. 37 the Government of the Philippine Is-

lands owned practically all of the stock of the Philippine National Bank. The President of the Senate and the Speaker of the House Representatives protested against the alleged assumed authority on the part of the Governor-General to vote said Government stock, and insisted upon their right to participate in the voting of the same.

Later, and without going into great detail, a meeting of the stockholders was called for the purpose of electing and removing members of the Board of Directors of said Bank, and a special meeting of the stockholders was held for that purpose. The meeting was attended by twenty-six private persons owning and representing the owners of ninety-four of the privately owned shares of the Bank, and by the Governor-General personally, assuming the right to attend the meeting in the name and on behalf of the Government of the Philippine Islands and to vote the shares of stock of the Bank owned by that Government. Neither the President of the Senate nor the Speaker of the House of Representives attended the meeting; but they wrote a letter protesting against it, upon the ground that the Governor-General alone has no right to represent the Government of the Philippine Islands in relation to the exercise of the voting power of its stock in the Bank. Whereupon the President of the Bank, acting as Chairman of the meeting, ruled that he could not recognize the right of the Governor-General to vote the Government stock without the concurrence of the

President of the Senate and the Speaker of the House of Representatives, and therefore ruled that a quorum was not present and for that reason the special meeting adjourned. Against the ruling of the Chairman that a quorum was not present and his declaration that the meeting had adjourned, the Governor-General protested and insisted that a quorum was present. Thereupon the President of the Bank and several of the private shareholders, including the Vice-President of the Bank, left the room.

Immediately thereafter the Governor-General and the other stockholders, twenty in number, remained and immediately organized the special meeting by the election of a Chairman *pro tempore* and a Secretary *pro tempore* and proceeded with the business for which the special meeting had been called. After the meeting had thus been organized, by unanimous vote taken by written ballots, it was determined: (a) to remove Directors Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia; (b) to amend the by-laws of the Bank by striking out Section 51 thereof; and (c) to elect Manuel Yriarte, John Gordon, A. Gideon and Leon M. Heras to fill the vacancies created by the resignation of Director Gideon and the removal of the other three Directors above named. And, accordingly, Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia were removed as Directors of said Bank, and Manuel Yriarte, John Gordon, A. Gideon, Leon M. Heras were duly elected as members of the Board of Direc-

tors of said Bank. Later the said Leon M. Heras resigned.

On January 21, 1927, a regular meeting of the Board of Directors of the Philippine National Bank was held at its office, and at which meeting Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia presented themselves. So likewise did Manuel Yriarte, John Gordon and A. Gideon present themselves at the place of the meeting, produced their certificate of election and made demand that they be permitted to participate in said meeting as members elect of the Board of Directors of the Philippine National Bank; that Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia and each of them withdraw from the meeting and cease to exercise or attempt to exercise any of the duties and powers as members of said Board. The President of the Bank, acting as President of said Board of Directors then present and presiding, refused to recognize the right of Manuel Yriarte, John Gordon and A. Gideon as members of said Board, but then and there recognized Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia and each of them as members of the Board. The said Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia and each of them ever since January 17, 1927, have continued to exercise and do still exercise the functions of the offices of Directors of the Philippine National Bank and claimed to be entitled to do so, while the said Manuel Yriarte, John Gordon and A. Gideon and each of

them claimed that they were legally and lawfully elected by the majority of the stockholders and that they are now entitled to said offices held adversely to them by the said respondents. For that reason the present action of quo warranto was brought by the Government of the Philippine Islands in relation of Manuel Yriarte, John Gordon and A. Gideon for the purpose of determining whether they are entitled, by virtue of their election, to act as members of the Board of Directors of the Philippine National Bank; and whether or not the respondents Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia should not be removed and altogether excluded as members of said Board.

Considering the foregoing facts we have the question squarely presented, whether the persons elected, Manuel Yriarte, John Gordon and A. Gideon, by the unanimous vote at the stockholders' meeting have been duly and legally elected Directors of the Philippine National Bank. No question is presented with reference to the election of any other person. No other persons were elected. No opposition at the time of the election was made to the election of Manuel Yriarte, John Gordon and A. Gideon. The special meeting was regularly and duly called. It was legally held. Manuel Yriarte, John Gordon and A. Gideon were elected without opposition. Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia simply contend that they were illegally removed and, inasmuch as they were illegally removed,

they contend that they have a right to continue to act as members of the Board of Directors.

Even granting for the purpose of the argument that the President of the Senate and the Speaker of the House of Representatives had a right to participate in voting, as members of the Board of Control, the stock belonging to the Government, they were not present at the meeting even though due notice had been given them. They were not represented by proxy. It is difficult now to understand upon what theory they base their right to vote or to participate in voting the stock of the Government when they were not present. There is nothing in the law which defines how the stock shall be voted by the Board of Control when there is a difference of opinion among its members. And in the absence of such regulation, and merely for the purposes of the argument, we are of the opinion that the members of said Board present would have a right to vote the stock held by the Government. Upon that opinion, however, we are not quite ready to rest our conclusion.

Considering the right of the stockholders to remove and elect members of the Board of Directors, and considering that at a special meeting of the stockholders called for that purpose, Manuel Yriarte, John Gordon and A. Gideon were duly and legally elected without opposition, and that Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia were legally and lawfully removed without opposition, we are at a loss to understand how can there be any

legal question concerning the right of the former to occupy the positions of the latter as members of the Board of Directors of the Philippine National Bank. These facts alone should be sufficient upon which to base the conclusion that the petitioners should be duly declared elected as members of said Board and that the respondents should be ousted and altogether excluded therefrom.

The general questions involved in the present case have heretofore been discussed in the case of the Government of the Philippine Islands vs. Milton E. Springer, et al., G. R. No. 26979. Some of the questions discussed there we deem it advisable to repeat here, and the first question relates to the:

RIGHT OF THE LEGISLATIVE DEPARTMENT OF THE GOVERNMENT TO EXECUTE OR ASSIST IN THE EXECUTION OF ITS LAWS

In relation with that subject it will be remembered that the Legislative Department of the Government of the Philippines adopted the law creating the charter of the Philippine National Bank. The Legislative Department of the Government in said charter provided a method by which it, through the President of the Senate and the Speaker of the House of Representatives, should assist in the execution of that law. Reference is hereby made to the decision in Cause G. R. No. 26979 for a general discussion of the question of the right of the legislative department of the government to execute or assist in the

execution of its law. Many authorities are there cited, supporting the doctrine that the legislative department of the government has no authority to do so.

In the present case the Legislature provided, by Section 4 of Act 2612, "that the voting power of all stock purchased directly by the Philippine Government as an investment from the general funds of the Government x x x x, shall be vested exclusively in the Governor-General." Said Section 4 was amended by Section 4 of Act 2747 so as to read:

> "The voting power of all the stock of the National Bank owned and controlled by the Government of the Philippine Islands shall be vested exclusively in a committee consisting of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives."

Said Section 4 of Act 2747 was further amended by Section 4 of Act 2938 so as to read:

> "The voting power of all the stock of the National Bank owned and controlled by the Government of the Philippine Islands shall be vested exclusively in a board, the short title of which shall be 'Board of Control,' composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives."

The law is not clear, showing why the word "committee" was changed to a "Board of Control", unless the reason is found in further provisions of said Act (2938) which give the "Board of Control"

further and other rights in the management of the Philippine National Bank, than the mere participation in the voting of stock. Said Act (2938) attempts to give the President of the Senate and the Speaker of the House of Representatives participation in the execution of the law governing the Philippine National Bank in many instances. Their participation in the execution of said law is found in subparagraph (f) of Section 10, in the proviso found in Section 14, in Section 18, in Section 20, in Section 22, in Section 23, in Section 44 and in Section 45 of said law. A reading of said sections shows that the Board of Directors is limited in their authority in many ways. There are many things which the Board of Directors had been authorized theretofore to do, which it was not permitted to do under Act 2938, except with the approval of the "Board of Control". Thus it will be seen that the phrase "Board of Control" as used in Section 4 of Act 2938 included many powers which had not therefore been given to the committee, and that the President of the Senate and the Speaker of the House of Representatives, as members of the "Board of Control", were not only given authority to participate in the execution of said law with reference to the voting of the stock, but in a dozen other ways, in the management and control of the Bank.

Basing our conclusions upon the arguments adduced in the case of the National Coal Company (G. R. No. 26979), we are forced to the conclusion that,

that portion of Act 2938 which permits the President of the Senate and Speaker of the House of Representatives to participate in the execution of said law in the manner therein permitted, is illegal and void.

Another reason might be given why said particular provisions are null and void is, that there is nothing in the title of the Act which in the slightest degree indicates that such powers had been conferred upon the "Board of Control". The question relating to what the title of an Act must contain has already been discussed in the case of the National Coal Company (G. R. No. 26979). There is nothing in the title which indicates to the Board of Directors, the stockholders or the public, that it was the intention of the Legislature to participate in the control of the Philippine National Bank in the manner provided in said Act 2938. The Jones Law prohibits the inclusion in a law of more than one subject and requires that, that subject shall be expressed in the title of the bill.

POWER OF THE LEGISLATIVE DEPARTMENTS OF GOVERNMENTS UNDER THE AMERICAN FLAG

Some one has said that the powers of the legislative department of the government, like the boundaries of the ocean, are unlimited. In constitutional governments, however, as well as governments acting under delegated authority, the powers of each

of the departments of the same are limited and confined within the four walls of the constitution or the charter, and each department can only exercise such powers as are expressly given and such other powers as are necessarily implied from the given powers. The constitution is the shore of legislative authority, against which the waves of legislative enactment may dash, but over which they cannot leap.

Under a constitutional government, where the different departments of government are separated and each given a definite field within which to exercise its functions, it may be said that each department has no authority to enter upon the field of another department and attempt to perform the duties therein. The power of the legislature is the power to legislate only and to make such investigations as are necessary for that purpose. In the present case and under the charter of the Philippine National Bank the "Board of Control" has entered, through the President of the Senate and the Speaker of the House of Representatives as representatives of the Legislative Department of the Government, upon the field of the Executive Department for the purpose of assisting in the execution of laws and with the pretended majority of said Board, are attempting to take the execution of the law into their own hands. That cannot be permitted where the different departments of government are given separate and distinct fields within which to operate.

What was said in the case of the National Coal Company (G. R. No. 26979) in relation to:

(a) Powers of the Legislature granted by the Philippine Charter;

(b) The authority of the Philippine Legislature to enact laws is a delegated authority;

(c) The existing sovereign in the Philippine Islands;

(d) The right of the Philippine Legislature to appoint Committees and Boards of Control to assist in the execution of the laws;

is hereby made a part of this decision. Those questions are fully discussed in the decision in said case of the National Coal Company.

THE POWER AND AUTHORITY OF THE EXECUTIVE UNDER THE CHARTER OF THE PHILIPPINE GOVERNMENT

The charter of the Philippine Government provides "that the supreme executive power shall be vested in an executive officer whose official title shall be the Governor-General of the Philippine Islands." Stronger language could not have been used for the purpose of conferring upon the Governor-General of the Philippine Islands the full executive powers of the Government. There is nothing in any of the provisions of the charter of the Philippine Government which authorizes or permits the "supreme executive power" to divide its responsibility for the

faithful execution of the laws of the Philippine Islands with any other department, legislative or judicial, or with any of the bureaus of the Government. All executive functions of the Philippine Government are expressly under the direction and control of the Governor-General. The Governor-General, as the supreme executive power, is held responsible for the faithful execution of the laws of the Philippine Islands. For the faithful execution of the laws he alone has the ultimate responsibility. He is not justified in allowing a division of that authority. Mr. Baker, who was Secretary of War of the United States at the time the charter of the Philippine Islands was adopted, and who perhaps was more familiar with its meaning and purpose than any other one person, wrote a letter to Governor-General Harrison, in which he said in general terms: "It would seem to be the part of wisdom for the President and the Governor-General to admit of no encroachments on those powers placed in their hands."

A feeble executive in the administration of his department implies a feeble execution of the laws of the government. A feeble execution is but another phrase for a bad execution; and a Government ill executed, whatever it may be in theory, must be, in practice, a bad Government. Delay in the administration of the laws will lead to injustice, dissensions, turmoils and disorder and a possible loss of

the property of the state and the deprivation of the rights of the citizens.

DUTY OF THE GOVERNOR-GENERAL WHEN ADVISED OF THE ILLEGALITY OF A LAW —HE MAY DISREGARD IT OR FORMULATE A PROPER ISSUE TO BE PRESENTED TO THE COURTS CONCERNING ITS LEGALITY

It is the sworn duty of the Governor-General of the Philippines to execute the laws. That duty, however, does not require him to execute *an illegal Act* of the Legislature. When he is advised by his legal department that a certain Act or any part thereof, of the Legislature is illegal and void, he may do one of two things: (a) he may disregard it and refuse to execute it, or (b) he may formulate an issue upon the alleged illegality and have that question presented to the courts for solution. He is at liberty to take either course. He is acting within his powers whichever of these courses he elects to take. To disregard an illegal and void Act of the Legislature is neither tyranny nor a violation of his sworn duty. It would be a violation of his sworn duty to enforce or permit the enforcement of an illegal law.

RIGHT OF DIFFERENT DEPARTMENTS OF GOVERNMENT TO CONSTRUE POWERS GRANTED UNDER THE CONSTITUTION OR CHARTER

It needs no citation of authorities to sustain the doctrine that each department of government, in-

vested with constitutional or charter powers, must, in the performance of their legal duties, in many instances be the judge of their powers, or otherwise they could not act. Such interpretation of their powers is not exclusive, however. The parties aggrieved may resort to the courts for a judicial interpretation.

EXCLUSIVE DUTY OF THE GOVERNOR-GENERAL TO PROTECT THE PROPERTY OF THE GOVERNMENT

It is the duty of the Governor-General, as the supreme executive power, to protect the property of the Government. If he, by negligence or inattention to that responsibility permits the property of the Government to be wasted, destroyed or lost, he subjects himself to the danger of impeachment. His responsibility in that regard is then one of great seriousness. He should not supinely disregard it. While the legislative department of the Government may adopt laws for safeguarding or protecting the property, public and private, it cannot intervene in the enforcement of such law. The legislative department would thereby be taking part, not only in the enactment of laws but in the execution of the same, which is not permitted under the American Constitution and system of Government.

WHAT HAS BEEN DONE BY LEGISLATIVE DEPARTMENT FURNISHES NO NECES-

SARY CRITERION AS TO ITS REAL POWER

Our attention has been called to many laws in which the Legislative Department of the Government has either directly or indirectly attempted to participate in the enforcement of the same. The fact that such laws have been enforced, without question, furnishes no criterion, nor is the Government estopped from raising the question of the legality of such acts in subsequent actions. The mere fact that legality of acts have never been questioned and their legality has been passed *sub silentio* does not create a conclusive presumption that they were in fact adopted within the powers of the Legislative Department of the Government. The fact that a statute has been accepted as valid and invoked and applied for many years in cases where its validity was not raised or passed on, does not prevent a court from later passing on its validity where the question is properly raised and presented.

McGirr vs. Hamilton et al., 30 P. R. 563, and cases cited.

LEGALITY OF THAT PROVISION OF ACT 2747, AS AMENDED BY ACT 2938, CREATING THE "BOARD OF CONTROL"

In addition to the contention that the Legislature, by virtue of the provisions of Acts 2747 and 2938, not only attempted to legislate but to participate in the execution of its laws, there is still ano-

ther objection to the legality of that provision of said Acts which creates the "Board of Control". One of the inhibitions against the power of the Philippine Legislature is found in one of the paragraphs of Section 3 of the Jones Law. Said paragraph provides: "That no bill (public or private) which may be enacted into law shall embrace more than one subject and that subject shall be expressed in the title of the bill." From a reading of the provisions of the charter of the Philippine National Bank in relation with the title of said law, it will be seen that in each of said Act more than one subject is covered. There is nothing in the title of the Acts which gave even the members of the Legislature the slightest idea that it was adopting a law which contained a provision, through which, the Legislature itself by means of the "Board of Control", should participate directly in their execution.

The purpose of that legislative restriction and the evils sought to be remedied thereby are clearly stated by Mr. Sutherland, now an Associate Justice of the Supreme Court of the United States. In Section 111 of his valuable work on Statutory Construction he says:

"In the construction and application of this constitutional restriction the courts have kept steadily in view the correction of the mischief against which it was aimed. The object is to prevent the practice, which was common in all legislative bodies where no such restriction existed, of embracing in the same bill

incongruous matters having no relation to each other or to the subject specified in the title, by which measures were often adopted without attracting attention. Such distinct subjects represented diverse interests, and were combined in order to unite the members of the legislature who favor either in support of all. These combinations were corruptive of the legislature and dangerous to the State. Such *omnibus* bills sometimes included more than a hundred sections on as many different subjects, with a title appropriate to the first section, 'and for other purposes.'

"The failure to indicate in the title of the bill the object intended to be accomplished by the legislation often resulted in members voting ignorantly for measures which they would not knowingly have approved; and not only were legislators thus misled, but the public also; so that legislative provisions were steadily pushed through in the closing hours of a session, which, having no merits to commend them, would have been made odious by popular discussion and remonstrance if their pendency had been seasonably announced. The constitutional clause under discussion is intended to correct these evils; to prevent such corrupting aggregations of incongruous measures, by confining each act to one subject or object; to prevent surprise and inadvertence by requiring that subject or object to be expressed in the title."

The authorities are, to all intents, uniform that

this constitutional requirement is mandatory and not directory.

Central Capiz vs. Ramirez, 40 P. R. 883.

Inasmuch as the body of said Acts contains a provision to which no reference is made in the title, in view of the well established authorities, we are forced to the conclusion that, that provision creating the "Board of Control" is illegal and void. That illegality, however, is one which may be separated from the rest of the Acts without affecting the legality of the other provisions, except those which permit the "Board of Control" to interfere or to assist in controlling the operations of the Philippine National Bank as indicated above.

THE "BOARD OF CONTROL" AND MEMBERS THEREOF, AS PUBLIC OFFICERS OF THE GOVERNMENT

Considering the view which we have taken concerning the legality of the creation of the "Board of Control", it is a matter of very little importance whether the members of said Board, in the performance of their duties, are public officers or not. Reference is hereby made to a further discussion of this particular subject in the case of the National Coal Company (G. R. No. 26979).

THE RIGHT OF THE COURT TO DECIDE THE QUESTION, WHAT ARE THE RESPECTIVE POWERS OF THE DIFFERENT

DEPARTMENTS OF GOVERNMENT, AND THE LEGALITY OF LAWS

It is conceded by all of the eminent authorities upon constitutional law that the courts have authority to finally determine what are the respective powers of the different departments of government.

"The question of the validity of every statute is first determined by the legislative department of the Government, and the Courts are not justified in adjudging a statute invalid in the face of the conclusions of the legislature, when the question of its validity is at all doubtful. The courts will assume that the validity of a statute was fully considered by the legislature when adopted. Courts will not presume a statute invalid unless it clearly appears that it falls within some of the inhibitions of the fundamental laws of the state. The wisdom or advisability of a particular statute is not a question for the courts to determine. If a particular statute is within the constitutional power of the legislature to enact, it should be sustained whether the courts agree or not in the wisdom of its enactment. If the statute covers subjects not authorized by the fundamental laws of the land, or by the constitution, then the courts are not only authorized but are justified in pronouncing the same illegal and void, no matter how wise or beneficent such legislation may seem to be. Courts are not justified in measuring their opinions with the opinion of the legislative department of the Gov-

ernment, as expressed in statutes, upon questions of the wisdom, justice and advisability of a particular law. In exercising the high authority conferred upon the courts to pronounce valid or invalid a particular statute, they are only the administrators of the public will, as expressed in the fundamental law of the land. If an act of the legislature is to be held illegal, it is not because the judges have any control over the legislative power, but because the act is forbidden by the fundamental law of the land and because the will of the people, as declared in such fundamental law, is paramount and must be obeyed, even by the legislature. In pronouncing a statute illegal, the courts are simply interpreting the meaning, force, and application of the fundamental law of the state."

Case vs. Board of Health, 24 P. R. 250, 251.

The judicial department of the Government may examine every law enacted by the legislative branch of the Government when the question is properly presented for the purpose of ascertaining:

(a) Whether or not such law came within the subject-matter upon which the legislative branch of the Government might legislate; and

(b) Whether the provisions of such law were in harmony with the authority given the legislature.

If the judicial branch of the Government finds (a) that the legislative or executive branches of the Government had authority to act upon the particu-

lar subject, and (b) that the particular law contained no provisions in excess of the powers of such department and the acts of the executive were within his powers, then that investigation, or that conclusion, conclusively terminates the investigation by the judicial department of the Government.

SOLICITUDE OF THE GOVERNMENT OF THE UNITED STATES AND ITS REPRESENTATIVES IN THE PHILIPPINE ISLANDS FOR THE WELFARE AND WELL BEING OF THE INHABITANTS

No Government, past or present, has more carefully and watchfully guarded and protested, by law, the individual rights of life and property of the citizens of the Philippine Islands than the Government of the United States and its representatives. Each of the three departments of the Government has had separate and distinct functions to perform in this great labor. The history of the Philippine Islands, covering a period of more than a quarter of a century, discloses the fact that each department has performed its part well. No one department of the Government can or even has claimed, within its discretionary and legal powers, a greater zeal than the others in its desire to promote the welfare of the individual citizen. They are all joined together in their respective spheres and departments, harmoniously working to maintain good government, peace, and order to the end that the rights of each citizen

in his life and property be equally protected. No one department can claim that it has a monopoly of these benign purposes of the Government. Each department has an exclusive field, under the law, within which it can perform its part, within certain discretionary limits. No other department can claim a right to enter these discretionary and legal limits and assume to act there. No presumption of an abuse of these discretionary powers by one department will be considered, permitted or entertained by another. Such conduct on the part of one department, instead of tending to conserve good government and the rights of the people, would directly tend to destroy the confidence of the people in the Government and to undermine the very foundations of the Government itself.

INTERVENORS

The intervenors contend that the said Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia had been illegally removed from the Board of Directors of the Philippine National Bank for the reason that there existed no valid and lawful reason for their removal; that no cause had been given or charges preferred against them which would justify the action taken by the stockholders; that the removal of said respondents was purely an arbitrary act on the part of the Governor-General and the other private stockholders, and was done for the sole purpose of raising the issue and formulating

a moot case as regards the Philippine National Bank on the legality of Section 4 of Act 2612 as amended by Acts 2747 and 2938; that the attempted removal of said Directors will inevitably affect the management and administration of the business and affairs of the Philippine National Bank and will result in the impairment of its credit, reputation and stability as a financial institution, to the irreparable damage of the intervenors and other stockholders of said Bank.

In reply to that argument, it may be said:

(a) That the meeting of the stockholders for the purpose of removing said Directors was duly and legally called;

(b) That the resolution of the Board of Directors, calling said meeting of the stockholders for the purpose indicated, was within the authority of said Board;

(c) That notice of the particular purpose of the meeting was given;

(d) That in pursuance of the regular call for the special meeting of the Board of Directors, the meeting was properly held;

(e) That no protest was made even by the respondents or by any other of the stockholders of the Philippine National Bank to the holding of said meeting; and

(f) That under the provisions of Section 34 of Act 1459 the stockholders were authorized to remove

said Directors Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia.

After a full consideration of the law and facts, in relation with the arguments of the petitioners and the intervenors, we are fully persuaded that there exists no lawful reason for declaring that the stockholders at said special meeting had not acted within their power and authority in the removal from the Board of Directors of the Philippine National Bank of said Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia. The prayer of the petition, therefore, of the intervenors is hereby denied.

CONCLUSIONS

For all of the foregoing reasons the petition for the extraordinary legal writ of quo warranto should be granted, and that Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia are each illegally and unlawfully occupying the position of member of the Board of Directors of the Philippine National Bank and should be ousted and altogether excluded therefrom; that Manuel Yriarte, John Gordon and A. Gideon have been duly and legally elected as members of the Board of Directors of the Philippine National Bank, and judgment is rendered that they be immediately inducted into said position, to take charge thereof and to perform the duties incumbent upon them as members of the Board of Directors. The demurrer is overruled. Considering the petition and demurrer in relation with the stipulated facts, there

seems to be no reason for permitting an answer to be filed. And without any finding as to costs, it is so ordered.

(Sgd.) E. FINLEY JOHNSON,

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, *Plaintiff,* *vs.* GREGORIO AGONCILLO, BALDOMERO ROXAS and CATALINO LAVADIA, *Defendants,* GERONIMO SANTIAGO, VICTOR BUENCAMINO, GREGORIO SINJIAN, EUFEMIA TAPIA, MARIA SALUD TAPIA, LADISLAO TAPIA, and DIONISIO JAKOSALEM, as Administrator of the Estate of Pedro Cui, *Intervenors.*	"QUO WARRANTO" G. R. No. 27225 Justices Present: Avaceña, C. J., Johnson, Street, Malcolm, Villamor, Ostrand, Johns, Romualdez and Villa-Real, JJ.

AVANCEÑA, C. J., and JJ. VILLAMOR and VILLA-REAL, *dissenting*:—

Our dissent here is based on the same grounds as our dissent in the companion case, the Government of the Philippine Islands v. Springer, et al., G. R. No. 26979, particularly on the ground that Section 4 of Act 2612, as amended by Section 1 of Act 2747, by which the Board of Control has been created, being constitutional and valid, the Governor-General alone, without the concurrence of the President of the Senate and the Speaker of the House of Representatives, who with him compose the said Board, cannot

vote the stock of the Government in the Philippine National Bank, inasmuch as the voting of such stock is a mere delegation of power by a stockholder for a private purpose (The Bank of the United States v. The Planters Bank of Georgia, 6 L. Ed. 244; The Bank of Kentucky v. Wister, et al., 7 L. Ed. 318) the exercise of which requires discretion and judgment (18 C. J. 472, note 3.a).

The complaint should be dismissed.

(Sgd.) RAMON AVANCEÑA.
(Sgd.) IGNACIO VILLAMOR.
(Sgd.) ANTONIO VILLA-REAL.

On the 4th day of April, 1927, the defendants presented the following:

(CAPTION AND TITLE OMITTED)

EXCEPTION AND MOTION

Now come the above-named defendants and except to the decision rendered by this Court on the 1st day of April, 1927, in the above-entitled action, and also except to the final judgment entered therein.

Notice is hereby given that the defendants intend to petition the Supreme Court of the United States for a writ of certiorari for the revision of the decision and judgment of this Court; and said defendants hereby make application for the retention of the record in said cause in this Court pending the preparation and certification of said record and the

presentation of said petition to the Supreme Court of the United States.

The grounds, *inter alia*, upon which the defendants intend to petition the Supreme Court of the United States for a writ of certiorari for the revision of the decision and judgment of this Court hereinabove referred to are:

(1) That the decision and judgment of this Court are contrary to the law and the evidence;

(2) That in this action a statute of the United States is involved.

The defendants also pray for a stay of enforcement of the judgment of this Court during the pendency of the application for a writ of certiorari and of the proceedings to be had in the Supreme Court of the United States.

Manila, April 4, 1927.

JOSE ABAD SANTOS
ARANETA & ZARAGOZA
CHARLES E. TENNEY
CAMUS, DELGADO & RECTO
MARIANO H. DE JOYA
By (Sgd.) JOSE A. SANTOS,
Attorneys for the Defendants,
317-321 Masonic Temple,
Manila.

COPY RECEIVED this
4th day of April, 1927.
(Sgd.) DELFIN JARANILLA,
Attorney-General, Manila.

On the 4th day of April, 1927, the plaintiff filed the following:

(CAPTION AND TITLE OMITTED)

MEMORANDUM OF PLAINTIFF IN OPPOSITION TO THE DEFENDANTS' APPLICATION FOR STAY OF EXECUTION

Broad considerations of public policy prohibit the granting of a stay of execution in this case. The effect of the decision herein is to hold that the voting of the government-owned stocks in the Philippine National Bank is exclusively an executive function, and that the Legislature may not absorb to itself or its officers any share of that voting power. Under existing legislation that function is vested in the Governor-General alone. To grant a stay would, in effect, operate to interfere with the Chief Executive of these Islands in the discharge of that executive function.

Furthermore, the administration of, and control over, millions of pesos of Government money, invested in the stocks of Government-owned corporations, are involved in the decision herein. It would be in the last degree impolitic to leave that administration and control in the hands of persons who, as the court has found, are strangers to these corporations and are usurping the powers of directors thereof. That administration and control involves problems that arise from day to day, the solution of which should

not be left, in whole or in part, to men who are without authority to act in behalf of those corporations. The proper administration of this property demands that an immediate end be put to the present uncertainty and chaos.

The authorities hold that, in the absence of express statutory provision otherwise, a judgment of ouster in quo warranto proceedings is self-executing, requiring no process to make it effective, and that the filing of a supersedeas bond, will operate, at the most, to stay execution for costs.

Thus in Foster v. Kansas, 112 U. S. 201, 28 L. Ed. 629, 630, the court said:

> *"The judgment operated of itself to remove Foster and leave his office vacant. It needed no execution to carry it into effect."*

In Faucett v. Superior Court, 15 Wash. 342, 55 Am. St. Reports 894, the court said:

> "The question then is, What is the effect and nature of a judgment of ouster from a public office? It seems to be the settled rule that *such a judgment divests the person ousted of all official authority whatever, and fully and completely excludes him from the office as long as the judgment remains in force.* High on Extraordinary Legal Remedies, 2nd Ed., Sec. 756; Mechem on Public Officers, Sec. 497.
>
> "And a judgment in favor of a relator in a proceeding by information to try title to public office *is, from its very nature, self-executing. By its own force, and without the aid*

> *of process or further action of the court, it accomplishes the object sought to be attained.* So far, then, as such a judgment is concerned, there is nothing upon which a stay bond can operate, except an execution for costs, where, as in this case, costs are awarded to the relator. x x x x The result of permitting such a judgment to be suspended by an appeal and stay bond would, for obvious reasons, in many instances, in effect, completely destroy the relator's remedy. x x x x The following authorities are in point on the questions here involved: People v. Stephenson, 98 Mich. 218; State v. Woodson, 128 Mo. 497; Fylpaa v. Brown County (S. D. April 20, 1895), 62 N. W. Rep. 962; Allen v. Robinson, 17 Minn. 113; Jayne v. Drorbaugh, 63 Iowa 711; State v. Meeker, 19 Neb. 444; Walls v. Palmer, 64 Ind. 493; Elliot on Appellate Procedure, Secs 392, 393."

In State v. Wilson, 121 N. C. 425, 480, 28 S. E. 554, 565, the Court, in passing upon two motions, one by the defendant to recall a writ of execution issued on a judgment of ouster in quo warranto proceedings, and the other to set aside the supersedeas proceedings, said—

> "We are also of the opinion that the judgment of this court *ex propio vigore*, placed the relator in possession of the office at the time judgment was filed. He having qualified, no process was necessary for that purpose.x x x The judgment took effect immediately upon

being filed, and is not superseded by the subsequent writ of error, regular or irregular. Foster v. Kansas, 112 U. S. 205, 5 Sup. Ct. 8, 97. x x x x"

In People vs. Reimberg (1914), 263 Ill. 536, 105 N. E. 715, Ann. Cas. 1915 C 343, in a mandamus proceeding to compel recognition of the relators as members of a board of education during the pendency of an appeal in quo warranto proceedings in which they had been successful, the court said—

"It is further contended that to grant the writ in this case would prejudicially affect the rights of the parties in the quo warranto proceeding pending on appeal in the Appellate Court of the First District. The judgment of the Superior Court *is self-executing and requires no process to enforce it. An appeal bond or supersedeas bond will not operate to suspend such a judgment.* Barnes v. Chicago Typographical Union, No. 16, 232 Ill. 402, 83 N. E. 932, 122 Am. St. Rep. 129, 14 L. R. A. (N. S.) 1150; 17 Enc. of Pl. & Pr. 489; 20 Enc. of Pl. & Pr. 1244."

See also—

Olmstead v. Distilling Co. 73 Fed. 44,

Fulgham v. Johnson, 40 Ga. 164,

Welch v. Cooks, 7 How. Prac. 282.

Indeed, it is held that any attempt to resist such a judgment during the pendency of an appeal constitutes a contempt of the court rendering the judgment. Thus in State v. Wilson, *supra* the Court said—

"The relator being in office by virtue of the judgment of this court, any attempt by the

> defendant to exercise its functions, or to interfere with the full and free exercise thereof by the relator, and any attempt by any one else to interfere by alleged legal process or otherwise, unless and until the supreme court of the United States shall reverse the judgment of this court will be a contempt of this court."

Our opponents may argue that the foregoing cases deal with trials of title to public office, and not to corporate offices, and that different considerations apply to the latter. Our answer is that our statute makes no distinction. "Public civil office" and "office in a corporation" are dealt with as in pari materia, in subparagraph 1 of Sec. 197 of our Code of Civil Procedure. The reason is obvious. The purpose of a judgment of ouster from office in a corporation would, in many instances, be defeated, were a stay granted pending proceedings for the review thereof, just as would the purpose of a judgment of ouster from public office.

Our opponents may appeal to the provisions of Rule 42 of the Rules of this Court in support of their application for a stay of execution. Our answer is that those provisions have no application whatever to judgments which are, in their very nature, self-executing, as is the judgment in this case.

We submit, in view of the foregoing considera-

tions, that the application of the defendants for a stay of execution should be denied.

Manila, P. I., April 4, 1927.

Respectfully submitted,

(Sgd.) DELFIN JARANILLA,
Attorney-General.

(Sgd.) HUGH C. SMITH.
DEWITT, PERKINS & BRADY,
By (Sgd.) C. A. DEWITT,
Special Counsel for Plaintiff.

Received copy:

(Sgd.) JOSE A. SANTOS.

On the same date, to wit, the 4th day of April, 1927, the Court issued the following order:

"On consideration of the motions of counsel for the defendants to the cases of The Government of the Philippine Islands vs. Milton E. Springer, et al., No. 26979, and of The Government of the Philippine Islands vs. Gregorio Agoncillo, et al., No. 27225, excepting to the decisions rendered by this Court on the first day of April, 1927, and to the final judgments entered therein, and praying for stays of enforcement of the application for writs of certiorari and of the proceedings to be had in the Supreme Court of the United States; of the objections of counsel for the plaintiff in the above-mentioned cases to the granting of the application of the defendants for stays of execution; of the statements made at the hear-

ing; and of the law, decisions, and all pertinent arguments relating to the issue, the Court ordered that the exceptions be noted and that the prayer for stays be denied. Avanceña, C. J., and Villamor and Villa-Real, JJ., dissented, with regard to the stay of execution."

On the 11th day of April, 1927, the Clerk of the Court entered the following judgment:

(CAPTION AND TITLE OMITTED)

The Court having regularly acquired jurisdiction for the trial of the above-entitled cause submitted by both parties for decision, after consideration thereof by the court upon the record, its decision and order for judgment having been filed on the 1st day of April, nineteen hundred and twenty-seven;

By virtue thereof it is hereby adjudged and decreed that the defendants are ousted and altogether excluded from the offices of directors of the Philippine National Bank which they are unlawfully holding, and that the three directors selected by the Governor-General shall be placed in possession of those offices, without costs.

(Sgd.) MANUEL M. DE HASAÑAS,
Deputy Clerk, Supreme Court, P. I.
In Charge of Manila Office.

The United States of America

PHILIPPINE ISLANDS

IN THE SUPREME COURT OF THE PHILIPPINE ISLANDS

G. R. No. 27225

QUO WARRANTO

THE GOVERMENT OF THE PHILIPPINE ISLANDS
Plantiff,

VERSUS

GREGORIO AGONCILLO, BALDOMERO ROXAS AND CATALINO LAVADIA,
Defendants.

I,V. Albert, Clerk of the Supreme Court of the Philippine Islands do hereby certify that the foregoing ..... printed pages contain a true and correct transcript of the record of the case entitled The Government of the Philippine Islands, plaintiff, *vs.* Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia, defendants, concerning quo warranto bearing No. 27225 of the docket of the Supreme Court.

In witness whereof, I have hereunto set my hand and affixed the seal of the Supreme Court of the Philippine Islands this ..... day of ...., A. D., one thousand nine hundred twenty-seven.

V. ALBERT,
Clerk of the Supreme Court of the Philippine Islands.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 21, 1927

The petition herein for a writ of certiorari to the Supreme Court of the Philippine Islands is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.